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Tuesday
September 26, 1995

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WASHINGTON, DC

[Two Sessions]

WHEN:	October 17 at 9:00 am and 1:30 pm
WHERE:	Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS:	202–523–4538

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Presidential Documents

Title 3—

The President

Proclamation 6827 of September 21, 1995

National Historically Black Colleges and Universities Week, 1995

By the President of the United States of America

A Proclamation

Just after the turn of the century, George Washington Carver, teacher, scientist, and intellectual leader at Tuskegee Institute, wrote, ''Education is the key to unlock the golden door of freedom.'' His words ring true for all Americans, but especially so for the students of our Nation's historically black colleges and universities. These institutions are a beacon of hope, a path to advancement, and a source of pride for African Americans and for everyone who values higher learning.

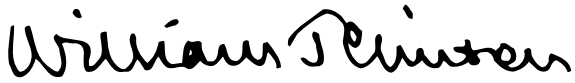
Founded on a commitment to equal opportunity and academic excellence, historically black colleges and universities have enabled countless members of our society to receive a quality education and to pursue their goals and careers. In every sector of our diverse and vibrant country—business, law, academia, medicine, science, the arts, and the military—graduates of these schools have made outstanding contributions to our Nation's progress.

These distinguished institutions have long provided a bridge to the American Dream for their alumni—many of whom are the first in their families to graduate from college. And while nearly all of America's 103 historically black colleges and universities are located in the South, our entire Nation has benefited from their legacy. Indeed, 27 percent of all baccalaureate degrees awarded to African Americans are granted by these schools, which represent only 3 percent of America's institutions of higher education.

It is their commitment to academic rigor and their dedication to empowering the minority community that have enabled historically black colleges and universities to build a proud tradition of excellence in this country. As centers of independent thought, black colleges hold out a promise to the young leaders of tomorrow—a promise that our Nation will continue to grow in wisdom, that the future will hold increased opportunity, and that education will open new doors to hope and prosperity.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 24 through September 30, 1995, as National Historically Black Colleges and Universities Week. I call upon the people of the United States, including government officials, educators, and administrators, to observe this week with appropriate programs, ceremonies, and activities honoring America's black colleges and their graduates, and I encourage all Americans to rededicate themselves to the principles of justice and equality set forth in our Constitution.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.



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Rules and Regulations

Federal Register
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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Regional Offices; Sub-Regional Office Closures; Telephone and Fax Number Change

AGENCY: Federal Labor Relations Authority.

ACTION: Final amendment to rules and regulations.

SUMMARY: This document amends the rules and regulations of the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Federal Service Impasses Panel to announce the closing of the New York and Los Angeles Sub-Regional Offices. In addition, the San Francisco Regional Office telephone and fax numbers have changed.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Clyde B. Blandford, Jr., Director of Operations and Resource Management, at (202) 482–6680, extension 206.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority and the General Counsel published, at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority and the General Counsel under chapter 71 of title 5 of the United States Code. These rules and regulations are required by title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR part 2400 *et seq.* (1994).

Appendix A, paragraph (d) of the rules and regulations lists the current addresses, telephone and fax numbers of the Regional Offices and Sub-Regional Offices of the Authority. This amendment announces the closure of the New York and Los Angeles Sub-Regional Offices. Upon a careful review of costs and operating efficiencies, we have concluded that the transaction of Authority business will be enhanced by the closure of these sub-regional offices. This change does not affect the geographic jurisdiction of the Boston and San Francisco Regional Offices, respectively. Additionally, this amendment announces changes in the telephone and fax numbers of the San Francisco Regional Office.

Executive Order 12291

This final regulation has been reviewed in accordance with Executive Order 12291. It is not classified as major because it does not meet the criteria for major regulations established by the Order.

Regulatory Flexibility Act Certification

The General Counsel has determined that this final regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

The final regulation contains no information collection or recordkeeping requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*)

For the reasons set out in the preamble and under the authority of 5 U.S.C. 7134, Appendix A to 5 CFR Chapter XIV is amended by revising paragraph (d) to read as follows:

Appendix A to 5 CFR Chapter XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) The Office addresses, telephone and fax numbers of the Regional Offices of the Authority are as follows:

(1) Boston, Massachusetts Regional Office—99 Summer Street, suite 1500, Boston, Massachusetts 02110–1200; telephone: FTS or commercial (617) 424–5730; fax: FTS or commercial (617) 424–5743.

(I) Philadelphia, Pennsylvania Sub-Regional Office—105 South 7th Street, 5th floor, Philadelphia, Pennsylvania 19106; telephone: FTS or commercial (215) 597–1527; fax: FTS or commercial (215) 597–3565.

(2) Washington, DC Regional Office—1255 22nd Street, NW., suite 400, Washington, DC 20037–1206; telephone: FTS or commercial (202) 653–8500; fax: FTS or commercial (202) 653–5091.

(3) Atlanta, Georgia Regional Office—1371 Peachtree Street, NE., suite 122, Atlanta, Georgia 30367; telephone: FTS or commercial (404) 347–2324; fax: FTS or commercial (404) 347–1032.

(4) Chicago, Illinois Regional Office—55 West Monroe, suite 1150, Chicago, Illinois 60603–9729; telephone: FTS or commercial (312) 353–6306; fax: FTS or commercial (312) 886–5977.

(I) Cleveland, Ohio Sub-Regional Office—Renaissance Building, 1350 Euclid Avenue, suite 420, Cleveland, Ohio 44115; telephone: FTS or commercial (216) 522–2114; fax: FTS or commercial (216) 522–7950.

(5) Dallas, Texas Regional Office—525 Griffin Street, suite 926, LB–107, Dallas, Texas 75202–1906; telephone: FTS or commercial (214) 767–4996; fax: FTS or commercial (214) 767–0156.

(6) Denver, Colorado Regional Office—1244 Speer Boulevard, suite 100, Denver, Colorado 80204–3581; telephone: FTS or commercial (303) 844–5224; fax: FTS or commercial (303) 844–2774.

(7) San Francisco, California Regional Office—901 Market Street, suite 220, San Francisco, California 94103–1791; telephone: FTS or commercial (415) 356–5000; fax: FTS or commercial (415) 356–5017.

(5 U.S.C. 7134)

Dated: September 20, 1995.

Solly Thomas,

Executive Director, Federal Labor Relations Authority.

[FR Doc. 95–23761 Filed 9–25–95; 8:45 am]

BILLING CODE 6727–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 95–035–2]

Black Stem Rust; Addition of Rust-Resistant Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On July 28, 1995, the Animal and Plant Health Inspection Service published a direct final rule. (See 60 FR 38666–38667, Docket No. 95–035–1.) The direct final rule notified the public of our intention to amend the black stem rust quarantine and regulations by adding three varieties to the list of rust-resistant *Berberis* species. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6365.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 19th day of September 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–23744 Filed 9–25–95; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 95–037DF]

Termination of Designation of the State of West Virginia With Respect to the Inspection of Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service is amending the poultry products inspection regulations by terminating the designation of the State of West Virginia under sections 1 through 4, 6 through 10 and 12–22 of the Poultry Products Inspection Act.

DATES: This notice of termination of designation rule will be effective on November 27, 1995 unless the Agency receives written adverse comments or written notice of intent to submit adverse comments on or before October 26, 1995.

ADDRESSES: Please send an original and two copies of written adverse comments or notice of intent to submit adverse comments to: FSIS Docket Clerk, DOCKET #95–037DF, Regulations Development, Policy, Evaluation and Planning Staff, Room 4352, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. All comments received will be available for public inspection from 8:30 a.m. to 1:00 p.m., and from 2:00 p.m. to 4:30 p.m., Monday through Friday, in Room 4352, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Connie L. Bacon, Acting Director, Federal-State Relations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–6313.

SUPPLEMENTARY INFORMATION:

Background

Section 5(c) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 454(c)) authorizes the Secretary of Agriculture to designate a State as one in which the provisions of sections 1–4, 6–10, and 12–22 of the PPIA shall apply to operations and transactions wholly within the State after he/she has determined that requirements at least equal to those imposed under the Act have not been developed and effectively enforced by the State.

On December 3, 1970 (35 FR 18410) notice was published in the Federal Register announcing that the Secretary of Agriculture was designating the State of West Virginia, under paragraph 5(c) (21 U.S.C. 454(c)) of the PPIA, as a State in which this Department is responsible for providing poultry products inspection at eligible establishments and for otherwise enforcing the applicable provisions of the PPIA with respect to intrastate activities in the State.

In addition, on November 12, 1976 (41 FR 49969), a notice was published in the Federal Register announcing that, effective on that date, this Department would assume the responsibility of administering the authorities provided for under sections 11(b), (c), and (d) (21 U.S.C. 460(b), (c) and (d)) of the PPIA regarding certain categories of processors of poultry products.

The aforementioned designation was undertaken by the Department when it was determined that the State of West Virginia was not in a position to enforce inspection requirements under State laws for poultry and poultry products in intrastate commerce that are at least ''equal to'' the requirements of the PPIA enforced by the Federal Government.

The Commissioner of Agriculture of the State of West Virginia has advised this Department that effective November 27, 1995, the State of West Virginia will be in a position to administer a State poultry inspection program which includes requirements at least ''equal to'' those imposed under the Federal poultry products inspection program for poultry and poultry products in interstate commerce.

Section 5(c)(3) of the PPIA provides that whenever the Secretary of Agriculture determines that any designated State has developed and will enforce State poultry products inspection requirements at least ''equal to'' those imposed by the Federal Government under the PPIA, with respect to intrastate operations and transactions within the State, he shall terminate the designation of such State. The Secretary has determined that the State of West Virginia has developed and will enforce such a State poultry products inspection program in accordance with the said provisions of the PPIA. In addition, the Secretary has determined that the State of West Virginia is also in a position to enforce effectively the provisions of section 11(b), (c), and (d) of the PPIA. Therefore, the designation of the State of West Virginia under those sections and sections 1–4, 6–10, and 12–22 of the PPIA is hereby terminated.

Effective Date

The Agency is publishing this rule without prior proposal because this action is viewed as noncontroversial and anticipates no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the Federal Register unless the Agency receives written adverse comments within 30 days of the date of publication of this rule in the Federal Register.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed. If the Agency receives written adverse comments, a notice will be published in the Federal Register withdrawing this rule before the effective date and publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

Executive Order 12866

This direct final rule has been determined to be not significant under Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12778

This direct final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Effect on Small Entities

The Administrator, FSIS, has made a determination that this direct final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory

Flexibility Act (5 U.S.C. 601). This direct final rule will terminate the designation of the State of West Virginia under sections 1 through 4, 6 through 10 and 12–22 of the Poultry Products Inspection Act.

List of Subjects in 9 CFR Part 381

Poultry and poultry products.

Accordingly, Part 381 of the poultry products inspection regulations (9 CFR 381) is amended as follows:

PART 381—[AMENDED]

1. The authority citation for § 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

§ 381.221 [Amended]

2. Section 381.221 is amended by deleting ''West Virginia'' from the ''State'' column and by deleting the date which was added on the line with ''West Virginia''.

§ 381.224 [Amended]

3. Section 381.224 is amended by deleting ''West Virginia'' from the ''State'' column in three places and by deleting the dates which were added on the lines with ''West Virginia'' in three places.

Done at Washington, DC, on: September 20, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–23741 Filed 9–25–95; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF00

Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to provide a performance-based option for leakage-rate testing of containments of light-water-cooled nuclear power plants. This option is available for voluntary adoption by licensees in lieu of compliance with the prescriptive requirements contained in the current regulation. This action improves the focus of the regulations by eliminating prescriptive requirements that are marginal to safety. The final rule allows test intervals to be based on system and component performance and provides licensees greater flexibility for cost-effective implementation methods of regulatory safety objectives.

EFFECTIVE DATE: October 26, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6443, e-mail mkd@nrc.gov

SUPPLEMENTARY INFORMATION:

Background—Development of Proposed Rule

NRC's Marginal-to-Safety Program

In 1984, the NRC staff initiated a program to make regulatory requirements more efficient by eliminating those with marginal impact on safety. The NRC's initiative to eliminate requirements marginal to safety recognizes both the dynamic nature of the regulatory process and that the importance and safety contribution of some existing regulatory requirements may not have been accurately predicted when adopted or may have diminished with time. The availability of new technical information and methods justify a review and modification of existing requirements.

The NRC solicited comments from industry on specific regulatory requirements and associated regulatory positions that needed reevaluation. The Atomic Industrial Forum conducted a survey providing most of industry's input, published for the NRC as NUREG/CR–4330 [1], ''Review of Light Water Reactor Regulatory Requirements,'' Vol. 1, April 1986. A list of 45 candidates for potential regulatory modification were identified. The NRC's review of the list selected Appendix J as one of seven areas requiring further analysis (NUREG/CR–4330, Vols. 2 and 3, dated June 1986 and May 1987). The NRC also conducted a survey of its staff on the same issue. The NRC staff survey identified 54 candidates for regulatory modification, a number of which were previously identified in the industry survey. The NRC's assessment of this list also selected Appendix J as a potential candidate for modification.

The NRC published in the Federal Register, for comment, a proposed revision to Appendix J on October 29, 1986 (51 FR 39538) to update acceptance criteria and test methods based on experience in applying the existing requirements and advances in containment leak testing methods, to resolve interpretive questions, and to reduce the number of exemption requests. This proposed rule was withdrawn from further consideration and superseded with a more comprehensive revision of Appendix J.

The NRC published a notice in the Federal Register on February 4, 1992 (57 FR 4166), presenting its conclusion that Appendix J was a candidate whose requirements may be relaxed or eliminated based on cost-benefit considerations. On the basis of NRC staff analyses of public comments on the proposal, the Commission approved and announced on November 24, 1992 (57 FR 55156) its plans to initiate rulemaking for developing a performance-oriented and risk-based regulation for containment leakage-testing requirements. On January 27, 1993, (58 FR 6196) the NRC staff published a general framework for developing performance-oriented and risk-based regulations and, at a public workshop on April 27 and 28, 1993, invited discussions of specific proposals for modifying containment leakage-testing requirements. Industry and public comments on the proposals, and other recommendations and innovative ideas raised at the public workshop, were documented in the proceedings of the workshop (NUREG/CP–0129, September 1993). Specifically, the NRC concluded that the allowable containment leakage rate utilized in containment testing may be increased and other Appendix J requirements need not be as prescriptive as the current requirements. To increase flexibility, the detailed and prescriptive technical requirements contained in Appendix J regulations could be improved and replaced with performance-based requirements and supporting regulatory guides. The regulatory guides would allow alternative approaches, although compliance with existing regulatory requirements would continue to be acceptable. The performance-based requirements would reward superior operating practices.

The present rulemaking is part of this overall effort and initiative for eliminating requirements that are marginal to safety and is guided by the policies, framework and criteria for the

[1] Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P. O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

program. A more comprehensive proposed rule than that proposed in 1986 that accounts for the latest technical information and regulatory framework, using performance-oriented and risk-based approaches, was published by the NRC in the Federal Register on February 21, 1995. The public comment period for the proposed rule closed May 8, 1995.

NRC's Regulatory Improvement Program

The NRC's marginal-to-safety initiative is part of a broader NRC initiative for regulatory improvement. Through its Program for Regulatory Improvement, the NRC has institutionalized an ongoing effort to eliminate requirements marginal to safety and to reduce the regulatory burden on its licensees. The NRC staff's plan, summarized in SECY–94–090, dated March 31, 1994, satisfies the requirement for a periodic review of existing regulations given in Executive Order 12866 of September 30, 1993. This plan was approved by the Commission on May 18, 1994. The Regulatory Improvement Program is aimed at the fundamental principle adopted by the Commission that all regulatory burdens must be justified and that its regulatory process must be efficient. In practice, this means the elimination or modification of requirements for which burdens are not commensurate with their safety significance. The activities of the Regulatory Improvement Program should result in enhanced regulatory focus in areas that are more safety significant. As a result, an overall net increase in safety is expected from the program.

The Regulatory Improvement Program will include, whenever feasible and appropriate, the consideration of performance-oriented and risk-based approaches. The program will review requirements or license conditions that are identified as a significant burden on licensees. If review and analysis find that the requirements are marginal to safety, they will be eliminated or relaxed. By performance-oriented, the NRC means establishing regulatory objectives without prescribing the methods or hardware necessary to accomplish the objective, and allowing licensees the flexibility to propose cost-effective methods for implementation. By risk-based, the NRC means regulatory approaches that use probabilistic risk analysis (PRA) as the systematic framework for developing or modifying requirements.

In institutionalizing the Regulatory Improvement Program and adopting a performance-based regulatory approach, the NRC has formulated the following framework for revisions to its regulations:

(1) The new performance-based regulation will be less prescriptive and will allow licensees the flexibility to adopt cost-effective methods for implementing the safety objectives of the original rule.

(2) The regulatory safety objectives will be derived, to the extent feasible and practical, from risk considerations with appropriate consideration of uncertainties, and will be consistent with the NRC's Safety Goals.

(3) Detailed technical methods for measuring or judging the acceptability of a licensee's performance relative to the regulatory safety objectives will be, to the extent practical, provided in industry standards and guidance documents which are endorsed in NRC regulatory guides.

(4) The new regulation will be optional for current licensees so that licensees can decide to remain in compliance with current regulations.

(5) The regulation will be supported by necessary modifications to, or development of, the full body of regulatory practice including, for example, standard review plans, inspection procedures, guides, and other regulatory documents.

(6) The new regulation will be formulated to provide incentives for innovations leading to improvements in safety through better design, construction, operating, or maintenance practices.

Current Appendix J Requirements

Appendix J to 10 CFR Part 50, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors,'' became effective on March 16, 1973. The regulatory safety objective of reactor containment design is stated in 10 CFR Part 50, Appendix A, ''General Design Criteria for Nuclear Power Plants,'' Criterion No. 16, ''Containment Design.'' GDC Criterion 16 mandates ''an essentially leak-tight barrier against the uncontrolled release of radioactivity to the environment * * *'' for postulated accidents. Appendix J to 10 CFR Part 50 implements, in part, General Design Criterion No. 16 and specifies containment leakage-testing requirements, including the types of tests required. For each type of test required, Appendix J specifies how the tests should be conducted, the frequency of testing, and reporting requirements. Appendix J requires the following types of containment leak tests:

(1) Measurement of the containment integrated leakage rate (Type A tests, often referred to as ILRTs).

(2) Measurement of the leakage rate across each pressure-containing or leakage-limiting boundary for various primary reactor containment penetrations (Type B tests).

(3) Measurement of the containment isolation valves leakage rates (Type C tests).

Type B and C tests are referred to as local leakage-rate tests (LLRTs).

Leak-Tightness Requirements

Compliance with 10 CFR Part 50, Appendix J, requirements is determined by comparing the measured containment leakage rate with the maximum allowable leakage rate. Maximum allowable leakage rates are calculated in accordance with 10 CFR Part 100, ''Reactor Site Criteria,'' and are incorporated into the technical specifications. Typical allowable leakage rates are 0.1 percent of containment volume per day for pressurized water reactors (PWRs) and one volume percent per day for boiling water reactors (BWRs).

Test Frequency Requirements

Schedules for conducting containment leakage-rate tests are specified in Appendix J for both preoperational and periodic tests. Periodic leakage-rate test schedules are as follows:

Type A Tests

(1) After the preoperational leakage-rate test, a set of three Type A tests must be performed at approximately equal intervals during each 10-year service period. The third test of each set must be conducted when the plant is shut down for the 10-year plant in-service inspection.

(2) The performance of Type A tests must be limited to periods when the plant facility is nonoperational and secured in the shutdown condition under administrative control and in accordance with the safety procedures defined in the license.

(3) If any periodic Type A test fails to meet the applicable acceptance criteria, the test schedule applicable to subsequent Type A tests will be reviewed and approved by the Commission. If two consecutive periodic Type A tests fail to meet the applicable acceptance criteria, a Type A test must be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the

acceptance criteria, after which time the regular retest schedule may be resumed.

Type B Tests

(1) Except for airlocks, Type B tests must be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. If opened following a Type A or B test, containment penetrations subject to Type B testing must be tested prior to returning the reactor to an operating mode requiring containment integrity. For primary reactor containment penetrations employing a continuous leakage monitoring system, Type B tests, except for tests of airlocks, may be performed at every other reactor shutdown for refueling but in no case at intervals greater than 3 years.

(2) Airlocks must be tested prior to initial fuel loading and at six-month intervals thereafter. Airlocks opened during periods when containment integrity is not required by the plant's technical specifications must be tested at the end of such periods. Airlocks opened during periods when containment integrity is required by the plant's technical specifications must be tested within 3 days after being opened. For airlock doors opened more frequently than once every 3 days, the airlock must be tested at least once every 3 days during the period of frequent openings. For airlock doors having testable seals, testing the seals fulfills the 3-day test requirement. Airlock door-seal testing must not be substituted for the 6-month test of the entire airlock at not less than P_a, the calculated peak containment pressure related to the design basis accident.

Type C Tests

Type C tests must be performed during each reactor shutdown for refueling, but in no case at intervals greater than 2 years.

There have been two amendments to this Appendix since 1973. The first amendment, published September 22, 1980 (45 FR 62789), modified the Type B penetration test requirements to conform to what had become accepted practice through the granting of exemptions. The second amendment, published November 15, 1988 (53 FR 45890), incorporated the Mass Point Statistical Analysis Technique as a permissible alternative to the Total Time and Point-to-Point techniques specified in Appendix J.

International Experience

A combination of Type A tests and an on-line monitoring (OLM) capability is being actively pursued in Canada and Europe, notably in France and Belgium, and is currently being considered in Sweden. OLM is used to identify a ''normal'' containment pressurization pattern and to detect deviations from that pattern. With on-line, low-pressure testing, Hydro-Quebec's Gentilly-2 station is able to monitor the change in containment leaktightness between Type A tests. The Belgians conduct a leakage test using OLM during reactor operation after each cold shutdown longer than 15 days with the objective of detecting gross leaks. The objective of the Belgian approach to Type A testing is to reduce the frequency and duration of the tests. The Type A test is conducted at a containment pressure (P_t) not less than half of the peak pressure (0.5 P_a). It is performed once every 10 years. In France, containment leaktightness is continuously monitored during reactor operation in all of the French PWR plants using the SEXTEN system. It is also being evaluated by the Swedes for their PWR units. Leaks may be detected during the positive or negative pressure periods in the containment by evaluating the air mass balance in the containment. Type A tests are conducted at containment peak pressure (loss-of-coolant accident pressure) before initial plant startup, during the first refueling, and thereafter every 10 years unless a degradation in containment leaktightness is detected. In that case, tests are conducted more frequently.

Further details of international approaches to containment testing are provided in NUREG–1493.

Advance Notices for Rulemaking

Over time, it has become apparent that variations in plant design and operation frequently make it difficult to meet some of the requirements contained in Appendix J because of its prescriptive nature. Economic and occupational exposure costs are directly related to the frequency of containment testing. Containment integrated leakage-rate tests (Type A) preclude any other reactor maintenance activities and thus are on the critical path for return to service from reactor outages. In addition to the costs of the tests, integrated leak tests impose the added burden of the cost of replacement power. Containment-penetration leak tests (Type B and C) can be conducted during reactor shutdowns in parallel with other activities and thus tend to be less costly; however, the large number of penetrations impose a significant burden on the utilities. Additionally, risk assessments performed to date indicate that the allowable leakage rate from containments can be increased, and that control of containment leakage at the current low rates is not as risk significant as previously assumed.[2] [3]

In August of 1992, the NRC initiated a rulemaking to modify Appendix J to make it less prescriptive and more performance-oriented. The Commission also initiated a plan to relax the allowable containment leakage rate used to define performance standards for containment tests. In the Federal Register of January 27, 1993 (58 FR 6196), the NRC indicated the following potential modifications to Appendix J of 10 CFR Part 50 would be considered:

(1) Increase allowable containment leakage rates based on Safety Goals and PRA technology (i.e., define a new performance standard); and

(2) Modify Appendix J to be a performance-based regulation:

A. Limit the revised rule to a new regulatory objective. In order to ensure the availability of the containment during postulated accidents, licensees should either:

(i) Test overall containment leakage at intervals not longer than every 10 years, and test pressure-containing or leakage-limiting boundaries and containment isolation valves on an interval based on the performance history of the equipment; or

(ii) Provide on-line (i.e., continuous) monitoring of containment isolation status.

B. Remove prescriptive requirements from Appendix J and preserve useful portions as guidance in an NRC regulatory guide.

C. Endorse industry standards on:

(i) Guidance for calculating plant-specific allowable leakage rates based on new NRC performance standards;

(ii) Guidance on the conduct of containment tests; and

(iii) Guidance for on-line monitoring of containment isolation status.

D. Continue to accept compliance with the current detailed requirements in Appendix J (i.e., licensees presently in compliance with Appendix J will not need to do anything if they do not wish to change their practice).

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[2] ''Severe Accident Risks: An assessment for five U. S. Nuclear Power Plants, Final Summary Report.'' NUREG–1150, December 1990. Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P. O. Box 37082, Washington, DC 20013/7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

[3] ''Performance-Based Containment Leak Test Program,'' NUREG–1493, July 1995.

A public workshop on the subject was held by the NRC on April 27 and 28, 1993.[4]

February 1995 Proposed Revision

Based on several advance notices for rulemaking and significant public comment and discussion, evaluation of risks and costs, and consideration of which modifications have become feasible and practical, in the February 21, 1995, Federal Register the NRC proposed two phases for modifications of requirements to containment leakage testing. The first phase allowed leakage-rate testing intervals to be based on the performance of the containment system structures and components. The second phase will further examine the needed requirements of the containment function (i.e. structural and leak-tight integrity of containment system structures and components, and prevention of inadvertent bypass), and include consideration of the potential for on-line monitoring of containment integrity to verify certain functions. Public comments were solicited to guide this future work.

The February 21, 1995, proposed rule applies to all NRC licensees who operate light-water-cooled power reactors. The proposed rule allows licensees the option of continuing to comply with the current Appendix J or to adopt the new performance-based standards.

The NRC's analyses are based upon the insight gained through the use of probabilistic risk assessment techniques and the significant data base of practical, hands-on operating experience gained since Appendix J was promulgated in 1973. This operating experience provides solid evidence of the activities necessary to conduct Appendix J testing, and the costs of those activities both in monetary terms and occupational radiation exposure.

The proposed rule is based on analytical efforts documented in NUREG–1493 which, like NUREG–1150, confirms previous observations of insensitivity of population risks from severe reactor accidents to containment leakage rates.

The current Appendix J requirements continue to achieve the regulatory criterion of assuring an essentially leak-tight boundary between the power reactor system and the external environment (General Design Criterion 16). Costs associated with complying with current Appendix J requirements are estimated to be $165,000 for a complete battery of Type B/C tests and $1,890,000 for Type A tests. Over the average reactor's remaining lifetime of 20 years, the present value of all remaining containment leakage testing at a 5 percent discount rate is estimated to be about $7 million per reactor. Estimates of the remaining industry-wide costs of implementing current Appendix J requirements ranged from $720 to $1,080 million, approximately 75 percent of which could be averted with a performance-based rule.

The Regulatory Analysis for the proposed rule finds that by allowing requirements to remain in effect with marginal impact on safety, but which impose a significant cost on licensees, is to have missed an opportunity to improve regulatory coherence and to focus NRC's regulations to areas where the return in terms of added public safety is higher.

Specific alternatives for modifying the current Appendix J were identified by the public in response to the NRC's Federal Register notice published on January 27, 1993 (58 FR 6196). Those whose characteristics matched the NRC's established criteria for the marginal to safety program were selected for further review.

Modifications of Advance NRC Proposal

Allowable Leakage Rate

The NRC had initially planned to establish, by rulemaking, a risk-based allowable leakage rate commensurate with its significance to total public risk. Specific findings from NUREG–1493 on the allowable leakage rate include:

1. Allowable leakage could be increased approximately two orders of magnitude (100–200 fold) with marginal impact on population dose estimates from reactor accidents.

2. Calculated risks to individuals are several orders of magnitude below the NRC's Safety Goals for all reactors considered.

3. Increases in the allowable leakage rate are estimated to have a negligible impact on occupational exposure.

Relaxing the allowable leakage rate is estimated to reduce future industry testing costs by $50 to $110 million, a 10 percent decrease in overall leakage-rate testing costs.

A risk-based allowable leakage rate would be based on an evaluation, using PRA, of the sensitivity and significance of containment leakage to risk, and the determination of an appropriate containment leakage limit commensurate with its significance to the risk to the public and plant control-room operators. However, this would have entailed a major change in policy and restructuring of the current licensing basis and a more complete understanding of the uncertainties associated with the threat of severe accidents to the containment, and therefore, the NRC planned to develop a modification of the performance standard (allowable leakage level) in the second phase separate from modifications of testing requirements. This modification would be part of a broader effort to further examine the risk significance of various attributes of containment performance, i.e., structural and leak-tight integrity of containment-system structures and components, and inadvertent bypass.

On-Line Monitoring (OLM) Systems

Currently, there is no NRC requirement for systems which continuously monitor the containment to detect unintentional breaches of containment integrity.

Studies discussed in NUREG–1493, ''Performance-Based Containment Leak Test Program,'' found that, based on operating experience, OLM would not significantly reduce the risk to the public from nuclear plant operation and, thus, could not be justified solely on the basis of risk-based considerations. Specific findings include:

1. Existing continuous monitoring methods appear technically capable of detecting leaks in reactor containments within 1 day to several weeks. OLM systems are in use or planned in several European countries and Canada.

2. OLM systems are capable of detecting leaks only in systems that are open to the containment atmosphere during normal operation (approximately 10 percent of the mechanical penetrations).

3. The technical and administrative objectives of OLM systems and Type A tests are different.

4. OLM could not be considered as a complete replacement for Type A tests because it cannot challenge the structural and leak-tight integrity of the containment system at elevated pressures.

5. Analysis of the history of operating experience indicated a limited need for, and benefit of, OLM in the U.S.

Although OLM can not be justified solely based on risk considerations, a plant already possessing such a system has a greater assurance of achieving certain attributes of containment integrity. Therefore, OLM systems could contribute towards an overall leakage-monitoring scheme. Some capability for on-line monitoring already exists as a byproduct of specific containment designs. For example, licensees with

[4] ''Workshop on Program for Elimination of Requirements Marginal to Safety,'' NUREG/CP–0129, September 1994.

inerted BWR containments, or subatmospheric PWR containments, could possibly detect gross leakages that develop during normal operation.

Given that the application of on-line monitoring is specific to containment design, and generic application can not be justified solely on risk considerations, the NRC did not propose a requirement for OLMs. However, licensees with such a capability (e.g. inerted BWR containments, and subatmospheric PWR containments) were encouraged to propose plant-specific application of such a capability, and to take credit for any added assurance of containment integrity provided by such a system compared to other testing methods. The NRC proposed to reconsider the role of OLM in the second phase of modifications in this area along with the allowable leakage rate.

Proposed Modification of Type A, B, and C Test Intervals

In the February 1995 proposed rule, the NRC proposed a new risk-based regulation based on the performance history of components (containment, penetrations, valves) as the means to justify an increase in the interval for Type A, B, and C tests. The revised regulation requires tests to be conducted on an interval based on the performance of the containment structure, penetrations and valves without specifying the interval in the regulation. Currently, three Type A tests are conducted in every 10 year period. Type B (except airlocks, which are tested more frequently) and C tests are conducted on a frequency not to exceed 2 years.

The NRC proposed to base the frequency of Type A tests (ILRTs) on the historical performance of the overall containment system. Specific findings documented in NUREG–1493 that justify the proposal include:

1. The fraction of leakages detected only by ILRTs is small, on the order of a few percent.

2. Reducing the frequency of ILRT testing from 3 every 10 years to 1 every 10 years leads to a marginal increase in risk.

3. ILRTs also test the strength of the containment structure. No alternative to ILRTs has been identified to provide assurance that the containment structure would meet allowable leakage rates during design-basis accidents.

4. At a frequency of 1 test every 10 years, industry-wide occupational exposure would be reduced by 0.087 person-sievert (8.7 person-rem) per year.

Based on specific, detailed analyses of data from the North Anna and Grand Gulf nuclear power plants, and data from twenty-two nuclear plants (see NUREG–1493), performance-based alternatives to current LLRT methods are feasible with marginal impact on risk. Specific findings include:

1. Type B and C tests are capable of detecting over 97 percent of containment leakages.

2. Of the 97 percent, virtually all leakages are identified by LLRTs of containment isolation valves (Type C tests).

3. Based on the detailed evaluation of the experience of a single two-unit station, no correlation of failures with type of valve or plant service could be found.

4. For the 20 years of remaining operations, changing the Type B/C test frequency to once every 5 years for good-performing components is estimated to reduce industry-wide occupational radiation exposure by 0.72 person-sievert (72 person-rem) per year. If 20-year license extension is assumed, the estimate is 0.75 person-sievert (75 person-rem) per year.

Future industry testing costs are reduced by approximately $330 to $660 million if ILRT tests are conducted once every 10 years rather than the current 3 per 10 years. ILRT savings represent about 65 percent of the remaining costs of current Appendix J requirements. Performance-based LLRT alternatives are estimated to reduce future industry testing costs by $40 million to $55 million. LLRT savings represent about 5 percent of the total remaining costs of Appendix J testing.

Therefore, based on the risks and costs evaluated, and other considerations discussed above, a performance-based Appendix J was proposed which encompassed the following principles, which differ moderately from those first described in the Federal Register (January 27, 1993 58 FR 6197).

General (1) Make Appendix J less prescriptive and more performance-oriented; (2) Move details of Appendix J tests to a regulatory guide as guidance; (3) Endorse in a regulatory guide the industry guideline (NEI 94–01) on the conduct of containment tests (The methods for testing are contained in an industry standard (ANSI/ANS 56.8–1994) which is referenced in the NEI guideline); and (4) Allow voluntary adoption of the new regulation, i.e., current detailed requirements in Appendix J will continue to be acceptable for compliance with the modified rule.

Leakage Limits Acknowledge the less risk-significant nature of allowable containment leakage but pursue its modification as a separate action.

Type A Test Interval (1) Based on the limited value of integrated leakage-rate tests (ILRTs) in detecting significant leakages from penetrations and isolation valves, establish the test interval based on the performance of the containment system structure; (2) The performance criterion of the test will continue to be the allowable leakage rate (La); (3) The industry guideline allows extension of the Type A test interval to once every 10 years based on satisfactory performance of two previous tests, inclusive of the pre-operational ILRT; (4) In the regulatory guide, the NRC takes exception to industry guidance for the extension of the interval of the general visual inspection of the containment system, and limits the interval to 3 times every 10 years, in accordance with current practice.

Type B & C Test Interval (1) Allow local leakage-rate test (LLRTs) intervals to be established based on the performance history of each component; (2) The performance criterion for the tests will continue to be the allowable leakage rate (La); (3) Specific performance factors for establishing extended test intervals (up to 10 years for Type B components, and 5 years for Type C components) are contained in the regulatory guide and industry guideline. In the regulatory guide, the NRC has taken exception to the NEI guideline allowing the extension of Type C test intervals up to 10 years, and limits such extensions to 5 years.

Summary of Public Comments

Twenty-six letters were received that addressed the policy, technical, and cost aspects of the proposed rulemaking, including the nine questions posed by the NRC in the February 21, 1995 proposed rule. All comments, including the ones received by the NRC after the deadline were considered. The commenters included 4 private citizens, 1 public interest group, 18 utilities, 1 nuclear utility industry group, 1 State regulatory agency, and 1 foreign regulator.

Although the proposed rule did not generate a significant number of public comments, the commenters did align themselves into two distinct groups: those who supported publishing the rule and those against. Those who supported publishing the rule comprise the vast majority of the commenters (22) and included the Nuclear Energy Institute (NEI), which represents the nuclear utility licensees, eighteen individual nuclear power plant licensee respondents, a Spanish regulatory authority and two private citizens (Mr.

Hill and Mr. Barkley). This group is very supportive of the Commission's risk-based regulatory program, and supports proceeding with the rule in an expeditious manner, despite having reservations about three specific provisions. The issues of most concern to this group are: (1) Licensee commitments to certain requirements of the regulatory guide implementing Appendix J testing via use of the technical specifications (industry would prefer using a plant's final safety analysis report); (2) requirements to conduct visual internal and external inspections of the containment on a frequency of 3 times per 10 years (industry would prefer once per 10 years to coincide with Type A tests); (3) making Option B of the proposed rule mandatory (industry would prefer to retain the optional feature); and (4) Type C test frequency (industry would prefer a 10-year test interval for certain Type C valves). Industry supports a future rulemaking to increase the allowable leakage rate.

Two private citizens (Mr. Arndt and Dr. Reytblatt) are opposed to the proposed rule. The issues of most concern to these citizens are: (1) Type A test frequency (Mr. Arndt would prefer that frequencies be held at current levels); (2) Type A test methodology (Dr. Reytblatt wants to halt Type A testing until the test accuracy is improved); (3) Type C test frequencies (Mr. Arndt believes the existing database does not support 10-year test intervals, and suggests 5-years as an upper limit at the present time); and (4) Leakage rate (a future rulemaking to increase the allowable leakage rate should not be undertaken).

Two organizations are opposed to the proposed rule. The Bureau of Nuclear Engineering of the state of New Jersey and the Ohio Citizens for Responsible Energy (OCRE, represented by Ms. Hiatt), a public interest group, expressed skepticism in the risk-based approach to regulation as embodied in the philosophy of the Marginal-to-Safety Program. The issues of most concern to this group are that: (1) Increases in public risk are not acceptable, no matter how marginal; and (2) A future rulemaking to increase the allowable leakage rate should not be undertaken.

NRC Position. With respect to the areas of disagreement between the NRC and those who generally support the proposed rule, no new information has been provided in the public comments that was not already addressed in ongoing dialogue. Accordingly, the NRC has not made any substantive changes to its proposed regulation. Specifically, the NRC has retained: (1) Its position of requiring the use of technical specifications; (2) The intervals established for visual examinations of containment; and (3) The 5-year Type C test interval.

With respect to the optional feature of the rule, the NRC agrees with the industry and has retained this feature. With respect to Mr. Arndt and Dr. Reytblatt, the NRC agrees in part with Mr. Arndt and has decided not to alter the LLRT test interval as noted in item (3). The other issues raised by Mr. Arndt and Dr. Reytblatt contain no information that has not been considered previously in a public forum. Therefore, the NRC has decided to make no substantive changes to its proposed rule as a result of the issues raised. With respect to the two organizations opposed to the proposed rule (OCRE and the NJ Bureau of Nuclear Engineering), neither has provided new information or a compelling reason to abandon the risk-based approach to regulation.

In its preliminary criteria for developing performance-based regulations, the NRC identified several issues to be addressed by the rulemaking process as a measure of the viability of the revised rule. These issues were addressed in the proposed rule and the NRC sought further public input on them. Comments were received on these topics in addition to other areas of interest to the public. The following is a summary of comments received on these issues and areas, and NRC's response. A complete discussion of all comments is included in the Public Comment Resolution Document.[5]

1. Can the new rule and its implementation yield an equivalent level of, or would it only have a marginal impact on safety?

Twenty-four commenters addressed this issue, offering a wide variety of opinions. Twenty commenters believe that implementation of the proposed rule will provide an equivalent level of safety to that provided by the current rule. A majority of commenters, representing for the most part nuclear utilities, believe that the proposed regulation will reduce the testing burden currently imposed on the nuclear industry, and will result in more efficient use of utility resources, while ensuring the health and safety of the public. They believe that the practical experience gained from more than 1,500 reactor-years of commercial nuclear power-plant operation provides an appropriate basis to adjust the Appendix J testing intervals which were established over 20 years ago on the basis of engineering judgment. Further, these commenters believe that a significant reduction in occupational exposures can be achieved with reduced testing frequency.

Mr. E. Gunter Arndt, a private citizen, believes that the NRC has neither sufficient objective data nor perspective to justify increasing containment leakage rates, decreasing test frequencies, relaxing testing criteria, and reducing containment-system maintenance standards. Dr. Reytblatt, a private citizen, believes that Type A testing must be immediately suspended because the current testing methodology is flawed. Mr. Kent W. Tosch, Manager of New Jersey's Bureau of Nuclear Engineering, points out that the containment is an extremely important barrier to a release of radioactivity, but the philosophy reflected in this rulemaking is that this barrier can be allowed to become less reliable, even when some nuclear plants are showing signs of aging. Ms. Susan L. Hiatt, Director of Ohio Citizens for Responsible Energy, notes that relaxing the frequency of Appendix J tests leads to an increase in overall reactor risk of approximately 2 percent and, while the NRC may deem this to be marginal, it nonetheless is an increase in risk.

The NRC believes it has collected sufficient subjective and independent data to conduct its risk analysis. Detailed data from two independent power plants, representing four units, data supplied by the NEI representing approximately 30 additional units, and approximately 180 ILRT and licensee event reports were analyzed. These data produced consistent results. Dr. Reytblatt's views, while technically correct, have been opposed by several technically competent organizations including the American National Standards Institute, and Oak Ridge National Laboratory because the improvements he suggests will have an insignificant effect on measured containment leakage rates in practice and thus have no safety significance. The NRC believes there has been ample opportunity for public discussion of the basis for the Appendix J revisions.

Based on the foregoing, the NRC reaffirms its prior conclusion (stated in the February 21, 1995, Federal Register notice) that its safety objective for containment integrity can be maintained while at the same time reducing the burden on licensees. Additionally, the final rule provides a greater level of worker safety than that provided by the previous rule.

[5] Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; telephone (202) 634–3273; fax (202) 634–3343.

2. Can the regulatory/safety objective (qualitative or quantitative) be established in an objective manner to allow a common understanding between licensees and the NRC on how the performance or results will be measured or judged?

To avoid repetition, the NRC incorporated responses to this question with those of Question 3.

3. Can the regulation and implementation documents be developed in such a manner that they can be objectively and consistently inspected and enforced against?

Approximately 20 commenters expressed opinions on Questions #2 and #3. The majority of the commenters believe that regulatory/safety objectives can be established objectively, and can be consistently enforced, although opinions differ on the optimum enforcement mechanism. Mr. Fernando Robledo of the Spanish nuclear regulatory agency states that the use of probabilistic risk assessment in the regulatory process provides a more realistic and objective assessment of nuclear safety, and thus supports its increased use in the regulatory process. The NEI believes the use of technical specifications for inspection and enforcement is neither necessary nor warranted and that, rather than a licensee commitment in the plant technical specification, future licensee commitments to implement Option B should be provided by documentation in the updated Final Safety Analysis Report.

To assist in the common understanding of new methods of establishing Type A, B, and C test frequencies between the NRC and power reactor licensees, the NRC has had ongoing discussions with licensees. These discussions included participation in workshops designed to elicit a common understanding. Also, the NRC wishes to retain the current practice which requires its review and approval of changes to Appendix J performance limits and surveillance requirements. Therefore, the NRC has required that the regulatory guide should be specified in the technical specifications, an approach not inconsistent with the Commission's policy on technical specifications.

Based on the foregoing, the NRC reaffirms its prior conclusion (stated in the February 21, 1995, proposed rule) that it expects that its activities to date, the review and endorsement of a industry guideline in a regulatory guide, and the general reference of the regulatory guide in plant technical specifications, will provide a common understanding on the measures of compliance.

4. Should the proposed revision be made even less prescriptive?

Except for Mr. Hill and Mr. Barkley, commenters did not explicitly address this question, which was directed at the possibility of reducing, even further, the testing frequency of ILRTs based on the fact that there does seem to be a strong statistical link between passing or failing successive ILRTs. Mr. Hill believes that there is no need to make the rule less prescriptive, and it may be inferred that is no desire on the part of industry to further increase the testing interval between ILRTs or to eliminate them completely. Richard Barkley, although strongly supporting an adjustment to the frequency of Type A testing to once every 10 years, also discourages the NRC from adopting a Type A surveillance interval any longer than 10 years because of aging considerations.

The NRC has decided, in general, to maintain the present level of prescriptiveness in the proposed rule and, in particular, to not decrease further the test frequency for ILRTs. The NRC's position is guided by the desire to maintain some conservatism to address uncertainties and adopt an evolutionary approach wherein incentives remain for good performance.

5. Should the proposed revisions be made mandatory?

To avoid repetition, the NRC incorporated responses to this question with those of Question 7.

6. Was the definition of ''backfit'' in § 50.109(a)(1) intended to encompass rulemakings of the type represented by this proposed rule?

To avoid repetition, the NRC incorporated responses to this question with those of Question 7.

7. Is it appropriate for the Commission to waive the applicability of the Backfit Rule?

The majority of the 20 commenters believe that compliance with the performance-based Appendix J program should not be made mandatory. The NEI believes that rulemakings that provide relief from a current regulation but would also contain one or more new requirements (as is the case here) would be subject to the backfit rule. These commenters believe that application of the backfit rule would be necessary before the NRC could promulgate the performance-based Appendix J program as a requirement, believing some licensees might select, for reasons of cost, to continue to comply with the existing Appendix J.

The majority of commenters believe that the backfit rule would apply and should not be waived. Several utilities have no objection to waiving a backfit analysis when clear relief is available, but are concerned with the generic implications of waiving the applicability of the backfit rule. The NEI believes that while the proposed Appendix J revisions would provide much needed performance-based improvements to the existing Appendix J, it would also impose new requirements; thus, the proposed rule constitutes a backfit. Further, this commenter believes that, as a matter of administrative law, an agency lacks authority to depart from its own rules, thus, it cannot waive its own regulations.

The NRC believes that if the rule were made mandatory, all licensees would incur costs setting up the procedures for implementing the rule's requirements following the guidance provided in the regulatory guide and the NEI guidance document. For those utilities whose circumstances (e.g., remaining plant life) would lead them to follow the current Appendix J, costs would be incurred with no additional benefit. Thus, the NRC agrees with the opinions expressed by the NEI and has decided to retain the proposed rule in its present form, which provides a non-mandatory alternative to the current Appendix J requirements. Because the NRC has decided to retain the optional feature of the proposed rule, the question of backfit is not addressed.

8. Should NRC pursue a fundamental modification of its regulations in this area by establishing an allowable leakage rate based on risk analysis (as presented in draft NUREG–1493, Chapter 5), as compared to the current practice of using deterministic design basis accidents and dose guidelines contained in 10 CFR Part 100; or should the NRC modify the allowable leakage rate within the current licensing basis by revising source terms and updating regulatory guides (R.G.s 1.3 and 1.4)[6] for calculating doses to the public? What are the advantages and disadvantages of the two approaches? What are some other considerations than risk to public, e.g., plant control room habitability, that might limit the allowable leakage rate?

The 20 commenters who responded to this question consist predominantly of the utilities endorsing the NEI position. These respondents encourages the NRC

[6]Copies may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone 202–512–2249 or 202–512–2171); or from the National Technical Information Service by writing NTIS at Port Royal Road, Springfield, VA 22161.

to pursue a rulemaking to alter allowable leakage rates using risk-based analysis, believing that a firm technical basis exists for relaxing leakage rates up to two orders of magnitude with only a marginal impact on population risk estimates. It was also suggested that a review of the present source terms, dose projection models, and associated assumptions against the revised source terms and dose methodologies should also be performed to determine if relief can be achieved while assuring public health and safety. Three commenters discouraged the NRC from relaxing containment leakage rates ranging from the opinion that little benefit would result (Mr. E. Gunter Arndt) to an unequivocal belief that such a move would violate a plant's licensing basis by eliminating the protection provided for the nearest public individual by the 10 CFR Part 100 siting criteria (Ms. S. Hiatt). Ms. Susan Hiatt, representing the Ohio Citizens for Responsible Energy, believes that containment leak rates should be periodically reexamined, not for the purpose of relaxing them, but to determine whether they should be made more stringent given increasing population density around operating nuclear power plants.

The NRC has decided to continue to pursue further reductions in regulatory burden with marginal impacts on safety and will address the complexities noted in the public comments in its future efforts to relax the allowable leakage rate.

9. If the allowable leakage rate is increased, could on-line monitoring of containment integrity replace other current containment tests? Could the results of the on-line monitoring be used to establish a new performance basis for containment integrity involving less stringent reporting requirements if there is high assurance there are no large leakage paths in containment (> 1 in. diameter).

The 18 commenters who responded to this question consist of the NEI and the utilities endorsing the NEI position, and Mr. Richard Barkley. The commenters do not believe that on-line monitoring (OLM) of containment integrity can replace many of the current containment tests, and state that OLM systems have very limited abilities to identify breaches in containment integrity. In the experience of Mr. Barkley, such systems add unnecessary plant complexity and cost.

The NRC acknowledges the public comments rendered and will be guided by them in decisions yet to be made regarding the Phase 2 effort.

10. Are there any other regulatory approaches and technical methods by which the NRC can adopt a complete performance and risk basis to its regulations for containment leak-tight integrity? What are some of the attributes for performance, and what risk-based methods can be used to analyze these attributes?

The NEI, speaking for all other utilities, addressed this question by stating that it had not conducted any analyses to determine whether any other regulatory approaches and technical methods by which the NRC can adopt a complete performance and risk basis to its regulations for containment leak-tight integrity.

11. Rulemaking Documents.

Seventeen commenters expressed opinions about NRC's regulatory policy decisions and/or specific language in the rule or its supporting documents. Mr. Hill believes that the NRC's and the NEI's guidance documents are not developed to the point of establishing a common understanding of how to meet NRC's regulatory and safety objectives (e.g., while NEI 94–01 contains a lot of information and solid guidance, it also contains inconsistencies, contradictions and unclear passages). The NEI, whose comments were endorsed by most responding licensees, proposed modifications to several of the rulemaking documents, including the Federal Register notice and its own guidance document.

The NRC has amended its rule and accepts most of the revisions to the implementing documents to clarify language and achieve consistency between the rulemaking documents.

12. Technical Issues.

Testing Frequency

Twenty-four commenters expressed opinions on test frequency, the majority were supportive of 10-year intervals for both Types A, B and C tests. Regarding ILRTs, the Nuclear Energy Institute, several individual utilities, and Mr. Howard Hill expressed views that the proposed rule provides an acceptable testing frequency for ILRTs. Mr. Fernando Robledo, of the Spanish nuclear regulatory agency, believes that 10 years is too long a time interval between Type A containment tests. Mr. E. Gunter Arndt's view is that a preoperational test should not count as one of the two successful ILRT tests required to go to a 10-year test interval because preoperational conditions are not at all representative of operating conditions. The citizens' group, Ohio Citizens for Responsible Energy, believes the frequency of containment leak-rate testing should remain unchanged from the current practice.

Several commenters also expressed opinions on the NRC's position on LLRT testing frequency. Mr. Fernando Robledo, while agreeing in general with the test frequency for type B and C tests proposed in the draft regulatory guide, believes that certain mechanical penetrations particularly important for plant safety should be leak tested every 24 months. Mr. E. Gunter Arndt's view is that the testing history of penetrations, and especially of valves, does not support leaving them untested for 10 years and suggested that an upper limit should be once every 5 years. One utility in particular, and the Nuclear Energy Institute in general believe that the NRC does not go far enough in citing that several sets of data justify 10-year LLRT intervals. In contrast, Mr. Richard Barkley, who also endorses Type B & C testing frequency based on performance, strongly supports the NRC's proposal to prohibit the adoption of Type C surveillance intervals longer than 60 months.

In establishing the 5-year test interval for LLRTs, the NRC has designed a cautious, evolutionary approach as data are compiled to minimize the uncertainty now believed to exist with respect to LLRT data. The NRC's judgment, based on risk assessment and deterministic analysis, continues to be that the limited database on unquantified leakages and common mode and repetitive failures introduces significant uncertainties into the probabilistic risk analysis. The NRC will be open to submittals from licensees as more performance-based data are developed. The extension of LLRT test interval to 5 years is a prudent first step. By allowing a 25 percent margin in testing frequency requirements, the NRC has provided the flexibility to accommodate longer fuel cycles. With respect to the 10-year interval for ILRTs, the NRC believes its technical support document (NUREG–1493) is persuasive by demonstrating that testing intervals could be increased up to once every 20 years with an imperceptible increase in risk, using actual ILRT data which accounted for random and plant-specific failures and plant aging effects.

Based on the foregoing discussion, the NRC has decided to retain the 60-month Type C test interval and the 120-month interval for Type A and B tests. In response to public comments, the NRC has revised the regulatory guide to limit the extension of test intervals for main steam and feedwater isolation valves in BWRs, and containment purge and vent valves in PWRs and BWRs beyond 30 months given their operating experience and/or safety significance.

Test Pressures

Two commenters expressed opinions on the magnitude of the pressures used in conducting Type A leakage tests. Northern States Power Company believes that Type A testing at full pressure is unnecessary and believes that visual inspection coupled with a reduced pressure test will adequately assure that the containment structural members are leak-tight, especially since reduced pressure Type A tests are legally acceptable tests as prescribed in the current 10 CFR Part 50, Appendix J. Mr. E. Gunter Arndt states that while Type A tests performed at reduced pressure rather than peak accident pressure are economically advantageous to the industry, the results of these tests are not necessarily indicative of leakage rates during accidents.

The NRC believes that extrapolating low pressure leakage-test results to full pressure leakage-test results has turned out to be unsuccessful. The NRC believes that the peak calculated accident pressure: (1) Is consistent with the typical practice for NRC staff evaluations of accident pressure for the first 24 hours in accordance with Regulatory Guides 1.3 and 1.4; (2) Provides at least a nominal check for gross leak paths which might exist at high test pressures, but not at low test pressures; and (3) Directly represents technical specification leakage-rate limits, and provides greater confidence in containment system leak-tight integrity.

Based on the foregoing, the NRC has decided to retain the calculated design basis loss-of-coolant accident peak pressure as the ILRT test pressure.

Containment Inservice Visual Inspection

Eighteen commenters expressed opinions on this issue. The NEI and most utilities oppose the NRC's proposal to require visual examination of containment be performed 3 times every 10 years. These commenters suggest that this issue be taken up in a parallel rulemaking.

The NRC finds the industry's arguments for relaxing the frequency of containment visual inspections to be unpersuasive. Because the visual examination is not integral to the ILRT (i.e., may be performed independently) and because the NRC sees benefits to the early detection of unknown aging mechanisms which may be active, the NRC considers it prudent to conduct visual inspections on a frequency greater than the ILRT. Further, the NRC believes it is inappropriate to defer a requirement pertaining to containment structural integrity to an ongoing rulemaking to incorporate ASME Section XI, IWE and IWL until its form and substance is finalized.

Based on the foregoing, the NRC has decided to retain its frequency for the inservice visual inspection.

Reporting Requirements

Only one comment was received on this issue. Dr. Z. Reytblatt noted that the proposed rule's reporting requirements consist only of a cover letter to the NRC and suggested this is intended to conceal information from the public. Dr. Reytblatt suggests that utilities should be required to submit all computer files related to testing to the NRC immediately after the tests have been completed to prevent their alteration or destruction.

It is not the intent of the NRC's reporting requirements to conceal information from the public; if tests fail, the information is required to be reported to the NRC, and the NRC will make such data available to the public. The NRC has decided to retain its reporting requirements as stated in the proposed rule.

Modifications to the Proposed Rule in Response to Public Comments

The NRC has decided to amend its proposed rule and its implementing documents to clarify language. The NRC has concluded that its regulatory analysis and its technical support document, NUREG–1493, do not require corrections to its technical or cost analyses or its findings. Modifications to all documents will be restricted to clarifications and enhancements to assist in communications with the reader, specifically in areas discussed in the public comments.

The proposed rule has been modified by changing ''Acceptance criteria'' to ''Performance criteria'' in Section II, Definitions, and various conforming text changes to reflect consistent use of that term. Other similar redundant terms in the proposed rule, e.g. goals, have been deleted to establish clear and concise language in the rule.

Specific changes to the draft regulatory guide, Section C, Regulatory Position, include (1) in paragraph number 2, the inclusion of the rationale for denying the ''3 refueling cycle'' change requested in the public comments; (2) the inclusion of a new paragraph number 4, taking exception to the NEI Industry Guideline, Section 10.2.3.3, which provides guidance that an as-found Type C test *or an alternative test or analysis* (emphasis added) shall be performed prior to any maintenance, repair, modification, or adjustment activity if it could affect a valve's leak-tightness. ''Alternate test or analysis'' are not endorsed as appropriate substitutes for an as-found test, since the latter provides clear and objective evidence of performance of isolation components; and (3) limitation of the extension of test intervals for main steam and feedwater isolation valves in BWRs, and containment purge and vent valves in PWRs and BWRs beyond 30 months given their operating experience and/or safety significance.

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.163, ''Performance-Based Containment Leakage-Test Program,'' endorses an industry standard which contains guidance on an acceptable performance-based leakage-test program, leakage rate test methods, procedures, and analyses that may be used to implement the final regulation published in this notice.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The NRC staff's response to public comments received on the draft version of this guide (DG–1037, issued in February 1995) are available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Office of Administration, Attention: Distribution and Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by fax at (301) 415–2260. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be

obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Implementation

The proposed Option B to Appendix J will become effective 30 days after publication. At any time thereafter, a licensee or applicant may notify the NRC of its desire to perform containment leakage-rate testing according to Option B. Accompanying this notification, a licensee must submit proposed technical specifications changes which would eliminate those technical specifications which implement the current rule and propose a new technical specification referencing the NRC regulatory guide or, if the licensee desires, an alternative implementation guidance. Implementation must await NRC review and approval of the licensee's proposal. The NRC anticipates that a generic communication will be issued shortly which will provide the implementation procedure to all power reactor licensees.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. There will be a marginal radiological environmental impact offsite, and the occupational exposure onsite is expected to decrease by about 0.8 person-rem per year of plant operation for plant personnel if licensees adopt the performance-based testing scheme provided in the revised regulation. Alternatives to issuing this revision of the regulation were considered. One alternative would also entail complex revisions to other NRC regulations and therefore the NRC has decided to pursue it separately in the future. A third alternative would add regulatory burden without a commensurate safety benefit and therefore was found not to be acceptable. The environmental assessment is available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street NW, (Lower Level), Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; phone (202) 634–3273; fax (202) 634–3343.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Because the rule will relax existing information collection requirements by providing an option to the existing requirements, the public burden for this collection of information is expected to be reduced by approximately 400 hours per licensee per year. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a final regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street NW, (Lower Level), Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; phone (202) 634–3273; fax (202) 634–3343.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Size standard adopted by the NRC (10 CFR 2.810).

Backfit Analysis

This final rule amends a current regulation by establishing alternative requirements which may be voluntarily adopted by licensees. Therefore, the final rule does not constitute a backfit as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not necessary.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Sections 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Appendix J to 10 CFR Part 50 is amended by adding the following language between the title and the Table of Contents and adding the language for Option B after Section V.B3.

Appendix J—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors

This appendix includes two options, A and B, either of which can be chosen for meeting the requirements of this appendix.

Option A—Prescriptive Requirements

* * * * *

Option B—Performance-Based Requirements

Table of Contents

I. Introduction.
II. Definitions.
III. Performance-based leakage-test requirements.
A. Type A test.
B. Type B and C tests.
IV. Recordkeeping.
V. Application.

I. Introduction

One of the conditions required of all operating licenses for light-water-cooled power reactors as specified in § 50.54(o) is that primary reactor containments meet the leakage-rate test requirements in either Option A or B of this appendix. These test requirements ensure that (a) leakage through these containments or systems and components penetrating these containments does not exceed allowable leakage rates specified in the Technical Specifications and (b) integrity of the containment structure is maintained during its service life. Option B of this appendix identifies the performance-based requirements and criteria for preoperational and subsequent periodic leakage-rate testing.[3]

II. Definitions

Performance criteria means the performance standards against which test results are to be compared for establishing the acceptability of the containment system as a leakage-limiting boundary.

Containment system means the principal barrier, after the reactor coolant pressure boundary, to prevent the release of quantities of radioactive material that would have a significant radiological effect on the health of the public.

Overall integrated leakage rate means the total leakage rate through all tested leakage paths, including containment welds, valves, fittings, and components that penetrate the containment system.

La (percent/24 hours) means the maximum allowable leakage rate at pressure Pa as specified in the Technical Specifications.

Pa (p.s.i.g) means the calculated peak containment internal pressure related to the design basis loss-of-coolant accident as specified in the Technical Specifications.

III. Performance-Based Leakage-Test Requirements

A. Type A Test

Type A tests to measure the containment system overall integrated leakage rate must be conducted under conditions representing design basis loss-of-coolant accident containment peak pressure. A Type A test must be conducted (1) after the containment system has been completed and is ready for operation and (2) at a periodic interval based on the historical performance of the overall containment system as a barrier to fission product releases to reduce the risk from reactor accidents. A general visual inspection of the accessible interior and exterior surfaces of the containment system for structural deterioration which may affect the containment leak-tight integrity must be conducted prior to each test, and at a periodic interval between tests based on the performance of the containment system. The leakage rate must not exceed the allowable leakage rate (La) with margin, as specified in the Technical Specifications. The test results must be compared with previous results to examine the performance history of the overall containment system to limit leakage.

B. Type B and C Tests

Type B pneumatic tests to detect and measure local leakage rates across pressure retaining, leakage-limiting boundaries, and Type C pneumatic tests to measure containment isolation valve leakage rates, must be conducted (1) prior to initial criticality, and (2) periodically thereafter at intervals based on the safety significance and historical performance of each boundary and isolation valve to ensure the integrity of the overall containment system as a barrier to fission product release to reduce the risk from reactor accidents. The performance-based testing program must contain a performance criterion for Type B and C tests, consideration of leakage-rate limits and factors that are indicative of or affect performance, when establishing test intervals, evaluations of performance of containment system components, and comparison to previous test results to examine the performance history of the overall containment system to limit leakage. The tests must demonstrate that the sum of the leakage rates at accident pressure of Type B tests, and pathway leakage rates from Type C tests, is less than the performance criterion (La) with margin, as specified in the Technical Specification.

IV. Recordkeeping

The results of the preoperational and periodic Type A, B, and C tests must be documented to show that performance criteria for leakage have been met. The comparison to previous results of the performance of the overall containment system and of individual components within it must be documented to show that the test intervals established for the containment system and components within it are adequate. These records must be available for inspection at plant sites.

If the test results exceed the performance criteria (La) as defined in the plant Technical Specifications, those exceedances must be assessed for Emergency Notification System reporting under §§ 50.72 (b)(1)(ii) and § 50.72 (b)(2)(i), and for a Licensee Event Report under § 50.73 (a)(2)(ii).

V. Application

A. Applicability

The requirements in either or both Option B, III.A for Type A tests, and Option B, III.B for Type B and C tests, may be adopted on a voluntary basis by an operating nuclear power reactor licensee as specified in § 50.54 in substitution of the requirements for those tests contained in Option A of this appendix. If the requirements for tests in Option B, III.A or Option B, III.B are implemented, the recordkeeping requirements in Option B, IV for these tests must be substituted for the reporting requirements of these tests contained in Option A of this appendix.

B. Implementation

1. Specific exemptions to Option A of this appendix that have been formally approved by the AEC or NRC, according to 10 CFR 50.12, are still applicable to Option B of this appendix if necessary, unless specifically revoked by the NRC.

2. A licensee or applicant for an operating license may adopt Option B, or parts thereof, as specified in Section V.A of this Appendix, by submitting its implementation plan and request for revision to technical specifications (see paragraph B.3 below) to the Director of the Office of Nuclear Reactor Regulation.

3. The regulatory guide or other implementation document used by a licensee, or applicant for an operating license, to develop a performance-based leakage-testing program must be included, by general reference, in the plant technical specifications. The submittal for technical specification revisions must contain justification, including supporting analyses, if the licensee chooses to deviate from methods approved by the Commission and endorsed in a regulatory guide.

4. The detailed licensee programs for conducting testing under Option B must be available at the plant site for NRC inspection.

Dated at Rockville, Maryland this 20th day of September, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–23803 Filed 9–25–95; 8:45 am]

BILLING CODE 7590–01–P

[3] Specific guidance concerning a performance-based leakage-test program, acceptable leakage-rate test methods, procedures, and analyses that may be used to implement these requirements and criteria are provided in Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program.''

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Part 507

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models

AGENCY: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of enforcement position.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are hereby announcing an enforcement policy regarding a provision of the regulations governing the enforcement of labor condition applications filed by employers seeking to employ foreign workers in specialty occupations and as fashion models of distinguished merit and ability under the H–1B nonimmigrant visa classification. Under the Immigration and Nationality Act (INA), an employer seeking to employ such a nonimmigrant is required to file a labor condition application with DOL before the Immigration and Naturalization Service (INS) may approve an H–1B visa petition. The labor condition application process is administered by ETA; complaints and investigations regarding labor condition applications are the responsibility of ESA.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart H, and 29 CFR part 507, subpart H, contact Flora T. Richardson, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

On 20 CFR part 655, subpart I, and 29 CFR part 507, subpart I, contact Chief, Branch of Farm Labor and Immigration Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Secretary of Labor's Final Rule (December 20, 1994, 59 FR 65646) regarding the H–1B nonimmigrant program became effective on January 19, 1995. Section ____.731(b)(1) of the Final Rule requires that, in documenting its compliance with the wage requirements, an employer shall maintain at least the information listed in § ____.731(b)(1)(i) through (vii), not only for the H–1B nonimmigrant(s), but for ''all other employees for the specific employment in question at the place of employment.'' The prior Interim Final Rule (January 13, 1992, 57 FR 1316), at § ____.730(e)(2)(i), required that the employer maintain documentation of the listed items for ''all other individuals with experience and qualifications similar to the H–1B nonimmigrant for the specific employment in question at the place of employment.''

Enforcement Position

The Department hereby announces that, with respect to any additional workers for whom the Final Rule may have applied the recordkeeping requirements at § ____.731(b)(1), it will enforce this provision to require the employer to keep only those records which are required by the Fair Labor Standards Act (''FLSA''), 29 CFR Part 516. In virtually all situations, the Department anticipates that the records required by the FLSA include those listed under the H–1B Final Rule.

Signed at Washington, D.C., this 20th day of September, 1995.

John R. Beverly, III,

Deputy Director, United States Employment Service.

John Fraser,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 95–23788 Filed 9–26–95; 8:45 am]

BILLING CODE 4510–30 and 4510–27–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 94F–0005]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of oxidized bis(hydrogenated tallow alkyl)amines as a process stabilizer for polypropylene intended for use in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective September 26, 1995; written objections and requests for a hearing by October 26, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3080.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of February 24, 1994 (59 FR 8995), FDA announced that a food additive petition (FAP 4B4410) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532. The petition proposed that the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of oxidized bis(hydrogenated tallow alkyl)amines (CAS Reg. No. 143925–92–2) as a process stabilizer for polypropylene intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency is not including the Chemical Abstracts Service Registry number (CAS Reg. No. 143925–92–2) in the regulation because it corresponds to the pure hydroxylamine component of the additive and not to the additive itself. The agency concludes that the proposed food additive use is safe, and that the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 26, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any

particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* *	* * *
Oxidized bis(hydrogenated tallow alkyl)amines.	For use only at levels not to exceed 0.05 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 1.1, 1.2, or 1.3: The finished polymers may be used in contact with food types I, II, IV–B, VII–B, and VIII described in Table 1 of § 176.170(c) of this chapter, under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter, and with food types III, IV–A, V, VI, VII–A, and IX described in Table 1 of § 176.170(c) of this chapter, under conditions of use D through H described in Table 2 of § 176.170(c) of this chapter.

Dated: September 13, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–23776 Filed 9–25–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 453

[Docket No. 95N–0081]

Antibiotic Drugs; Clindamycin Phosphate Vaginal Cream

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to include accepted standards for a new antibiotic drug, clindamycin phosphate vaginal cream. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective October 26, 1995; written comments, notice of participation, and request for a hearing by October 26, 1995; data, information, and analyses to justify a hearing by November 27, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James M. Timper, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6714.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, clindamycin phosphate vaginal cream. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in part 453 (21 CFR part 453) to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because, when effective, it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective October 26, 1995. However, interested persons may, on or before October 26, 1995, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before October 26, 1995, a written notice of participation and request for a hearing, and (2) on or before November 27, 1995, the data, information, and

analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 453

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 453 is amended as follows:

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 453 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. New § 453.522d is added to subpart F to read as follows:

§ 453.522d Clindamycin phosphate vaginal cream.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Clindamycin phosphate vaginal cream contains clindamycin phosphate in a suitable and harmless cream vehicle. Each gram contains clindamycin phosphate equivalent to 20 milligrams of clindamycin activity. Its clindamycin content is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of milligrams of clindamycin that it is represented to contain. Its pH is not less than 3.0 and not more than 6.0. It passes the identity test. The clindamycin phosphate used conforms to the standards prescribed by § 453.22(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The clindamycin phosphate used in making the batch for clindamycin content, microbiological activity, moisture, pH, crystallinity, and identity.

(B) The batch for clindamycin content, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The clindamycin phosphate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(B) The batch: a minimum of six immediate containers.

(b) *Tests and methods of assay* —(1) *Clindamycin content (high performance liquid chromatography assay).* Proceed as directed in § 436.216 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 210 nanometers, a 25-centimeter long x 4.6 millimeter ID column packed with microparticulate (5 to 10 micrometers in diameter) reverse phase octylsilane hydrocarbon bonded silica packing material, a flow rate of 1.0 milliliter per minute, and a known injection volume of 20 microliters. The retention time of clindamycin phosphate, and clindamycin are approximately 6 and 9 minutes, respectively. Reagents, working standards and sample solutions, resolution test solution, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(A) *0.1M Potassium phosphate monobasic buffer.* Dissolve 13.61 grams of potassium phosphate monobasic in 775 milliliters of water. Adjust the pH to 2.5 with phosphoric acid. Further dilute with water to a volume of 1,000 milliliters.

(B) *Mobile phase.* Mix 225 milliliters of acetonitrile and 775 milliliters of 0.1*M* potassium phosphate, pH 2.5 buffer (225:775). Filter through a suitable filter capable of removing particulate matter greater than 0.5 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph.

(ii) *Preparation of working standard, sample, and resolution test solutions*—(A) *Working standard solution.* Dissolve an accurately weighed portion of the clindamycin phosphate working standard in sufficient mobile phase (prepared as directed in paragraph (b)(1)(i)(B) of this section) to obtain a solution containing 200 micrograms of clindamycin activity per milliliter.

(B) *Sample solutions.* Accurately weigh and transfer approximately 1.0 gram of the sample into a 125-milliliter Erlenmeyer flask. Add 100.0 milliliters of mobile phase (prepared as directed in paragraph (b)(1)(i)(B) of this section), accurately measured, and 8 to 10 glass beads (4 to 5 millimeters). Close the flask securely using a plastic stopper and shake vigorously by mechanical means for 1 hour at 50 °C. Cool in an ice bath for approximately 20 minutes. Centrifuge a portion of the mixture. Use the lower cloudy solution for chromatographic analysis. Filter a few milliliters of the centrifuged solution through an appropriate 2 micron filter.

(C) *Resolution test solution.* Place 15 milligrams each of clindamycin phosphate and clindamycin hydrochloride in a 25-milliliter volumetric flask and dissolve and dilute to volume with mobile phase and mix well. Use this solution to determine the resolution factor.

(iii) *System suitability requirements*—(A) *Asymmetry factor.* Calculate the asymmetry factor (A_S), measured at a point 5 percent of the peak height from the baseline as follows:

$$A_s = \frac{a + b}{2a}$$

where:

a = Horizontal distance from point of ascent to point of maximum peak height; and

b = Horizontal distance from point of maximum peak height to point of descent.

The asymmetry factor (A_s) is satisfactory if it is not less than 1.0 and not more than 1.3.

(B) *Efficiency of the column.* From the number of theoretical plates (*n*) calculated as described in § 436.216(c)(2) of this chapter, calculate the reduced plate height (h_r) as follows:

$$h_r = \frac{(L)(10{,}000)}{(n)(d_p)}$$

where:

L = Length of the column in centimeters;

n = Number of theoretical plates; and

d_p = Average diameter of the particles in the analytical column packing in micrometers.

The absolute efficiency (h_r) is satisfactory if it is not more than 15.

(C) *Resolution factor.* The resolution factor (R) between the peak for clindamycin phosphate and the peak for clindamycin (hydrochloride) in the chromatogram of the resolution test solution is satisfactory if it is not less than 6.0.

(D) *Coefficient of variation (relative standard deviation*). The coefficient of variation (S_R in percent) of 5 replicate injections of the working standard solution is satisfactory if it is not more than 2.5 percent. If the system suitability parameters have been met, then proceed as described in § 436.216(b) of this chapter.

(iv) *Calculation*. Calculate the clindamycin content as follows:

$$\text{Milligrams of clindamycin per gram} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the clindamycin phosphate peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the clindamycin phosphate peak in the chromatogram of the clindamycin phosphate working standard;

P_s = Clindamycin activity in the clindamycin phosphate working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *pH*. Proceed as directed in § 436.202 of this chapter, using the undiluted cream.

(3) *Identity*. The high-pressure liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the clindamycin phosphate working standard.

Dated: September 5, 1995.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–23737 Filed 9–25–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 126 and 127

[CGD 88–049]

RIN 2115–AD06

Waterfront Facilities Handling Liquefied Hazardous Gas

AGENCY: Coast Guard, DOT.

ACTION: Correcting Amendments.

SUMMARY: This document contains correcting amendments to the final rule in CGD 88–049, published on Thursday, August 3, 1995, at 60 FR 39788.

EFFECTIVE DATE: These amendments are effective on September 26, 1995.

FOR FURTHER INFORMATION CONTACT: CDR Dennis J. Haise, Operating and Environmental Standards Division (G–MOS–2), by telephone (202) 267–6451 or fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: The final rule that is the subject of these amendments regulates transfers of liquefied hazardous gas, in bulk, to and from vessels and waterfront facilities.

Need for Correction

As published, the final rule contains errors that may prove to be misleading and that therefore need correction.

Substance of Correction

Accordingly, the final rule published on August 3, 1995 [CGD 88–049], is corrected as follows:

Discussion of the Comments on and Changes to the NPRM [Corrected]

1. Page 39789, in the second column, paragraph 9, in the last sentence the phrase ''Section 127.110(c)'' is corrected to read ''Section 127.1101(c)''.

2. Page 39790, in the first column, paragraph 18, in the last sentence the word ''possible'' is corrected to read ''possibly''.

3. Page 39790, in the third column, paragraph 22, in the first sentence the phrase ''when a facility has fire or medical department of the facility'' is corrected to read ''when a facility has a fire or medical department on the facility''.

4. Page 39791, in the first column, in the third full sentence from the top of the page the letters ''LHG'' are corrected to read ''LNG''.

Collection of Information [Corrected]

5. Page 39793, at the bottom of the second column, in the table noting ''Section'' and ''Topic'' the words ''Decelaration of Inspection'' are corrected to read ''Declaration of Inspection''.

6. Page 39793, in the third column, under the heading DOT No: 2115, OMB Control No. ''0052'' is corrected to read ''0552'' and OMB Control No. ''0013'' is corrected to read ''0054''.

PART 127—WATERFRONT FACILITIES HANDLING LIQUEFIED NATURAL GAS AND LIQUEFIED HAZARDOUS GAS

§ 127.003 Incorporation by reference [Corrected]

7. Page 39794, in the second item under the title The American National Standards Institute (ANSI) the words ''ANSI S12.13, Part 1'' are corrected to read ''ANSI S12.13, Part I''.

§ 127.1203 Gas detection [Corrected]

8. Page 39797, in the third column, in paragraph (a) in the last sentence the words ''ANSI S12.13, Part 1'' are corrected to read ''ANSI S12.13, Part I''.

§ 127.1205 Emergency shutdown [Corrected]

9. Page 39798, in the first column, in paragraph (b)(4) the words ''105°(C 221°F)'' are corrected to read ''105°C (221°F)''.

§ 127.1207 Warning alarms [Corrected]

10. Page 39798, also in the first column, in paragraph (b), in the first line the word ''are'' is corrected to read ''area''.

§ 127.1301 Persons in charge of transfers for the facility; Qualifications and Certification [Corrected]

11. Page 39798, in the second column, paragraph (a)(2) the word ''Knowing'' is corrected to read ''Knows''.

§ 127.1307 Emergency Manual [Corrected]

12. Page 39799, in the first column, in paragraph (b) the words ''fire-prevention required'' are corrected to read ''fire-prevention plan required''.

Dated: September 15, 1995.

G.N. Naccara,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–23799 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–147]

RIN 2115–AA97

Safety Zone: Deepavali Fireworks Festival, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Deepavali Fireworks Festival Program located in the East River, New York. The safety zone is in effect from 6:45 p.m. until 8:15 p.m. on Sunday, October 15, 1995, unless extended or terminated sooner by the Captain of the Port New York. The safety zone temporarily closes all waters of the East River, shore to shore, south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

EFFECTIVE DATE: This rule is in effect from 6:45 p.m. until 8:15 p.m. on October 15, 1995, unless extended or terminated sooner by the Captain of the Port New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and CDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM, and for making this regulation effective less than 30 days after Federal Register publication. Due to the date this application was received, there was insufficient time to draft and publish a notice of proposed rulemaking that allows for a reasonable comment period prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to the public interest.

Adequate measures are being taken to ensure mariners are aware of this regulation. Notification of this rule will be published locally in the First Coast Guard District's Local Notice to Mariners, and announced via Safety Marine Information Broadcasts.

Background and Purpose

On September 5, 1995, the Coast Guard received an Application for Approval of Marine Event from Garden State Fireworks to hold a fireworks program in the waters of the East River. The fireworks program is being sponsored by the Association of Indians in America Inc. This regulation establishes a temporary safety zone in all waters of the East River, shore to shore, south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn. The safety zone is in effect from 6:45 p.m. until 8:15 p.m. on October 15, 1995, unless extended or terminated sooner by the Captain of the Port New York. The safety zone prevents vessels from transiting this area of the East River, and is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This regulation closes a portion of the East River, to vessel traffic from 6:45 p.m. until 8:15 p.m. on October 15, 1995, unless extended or terminated sooner by the Captain of the Port New York. The East River is subjected to moderate commercial vessel traffic. Although this regulation prevents traffic from transiting the safety zone area, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; recreational traffic and some commercial traffic can take an alternate route via the Hudson and Harlem Rivers; the event has been held annually for the past several years without incident or complaint; and the extensive, advance advisories which will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons set forth in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. Under the National Environmental Policy Act, the approval of the permit for marine event for this event is a federal action which is categorically excluded in accordance with section 2.B.2.e(35)(h) of Commandant Instruction M16475.1B. This fireworks display lasts 30 minutes and is expected to involve less than 200 spectator craft.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–147 is added to read as follows:

§ 165.T01–147 Safety Zone; Deepavali Fireworks Festival, East River, New York.

(a) *Location*. The safety zone includes all waters of the East River, shore to shore, south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

(b) *Effective period*. This section is in effect from 6:45 p.m. until 8:15 p.m. on October 15, 1995, unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations*. (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: September 15, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 95–23801 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 33–2–7095; FRL–5297–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of a revision to the California State Implementation Plan (SIP) proposed in the Federal Register on June 9, 1992. The revision concerns a rule from the San Diego County Air Pollution Control District (SDCAPCD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from solvents used in the manufacturing of pharmaceuticals and cosmetics. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on October 26, 1995.

ADDRESSES: Copies of the rule and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 ''K'' Street, Sacramento, CA 95814

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1188.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 1992 in 57 FR 24447, EPA proposed to approve the following SDCAPCD rule into the California SIP: Rule 67.15, Pharmaceutical and Cosmetic Manufacturing. Rule 67.15 was adopted by SDCAPCD on December 18, 1990. The rule was submitted by the California Air Resources Board (CARB) to EPA on April 5, 1991 in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for the above rule and nonattainment area is provided in the NPRM cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA, EPA regulations, and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rule meets the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 57 FR 24447 and in technical support documents (TSDs) available at EPA's Region IX office.

Response to Public Comments

A 30-day public comment period was provided in 57 FR 24447. EPA received no comments regarding the NPRM.

EPA Action

EPA is finalizing action to approve the above rule for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal

governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 5, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(183)(i)(A)(*13*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(183) * * *

(i) * * *

(A) * * *

(*13*) Rule 67.15, adopted on December 18, 1990.

* * * * *

[FR Doc. 95–23822 Filed 9–25–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–580; RM–6977, RM–7177, RM–7446]

Radio Broadcasting Services; Elkins, WV; Mountain Lake Park and Westernport, MD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission denied an application for review filed by Southern Highlands, Inc., which argued that a condition be placed on Marja's construction permit for Channel 255B1 at Elkins, West Virginia, requiring it to operate with maximum power and antenna height for Class B1 stations. In doing so, the Commission affirmed the *Memorandum Opinion and Order* on reconsideration in this proceeding, 57 FR 40342, September 3, 1992, which had granted in part Southern's petition for reconsideration and affirmed in part the *Report and Order*, 56 FR 52478, October 21, 1991. The *Memorandum Opinion and Order* rearranged the allotment plan adopted by the *Report and Order* in order to permit 6 kilowatt operation at Mountain Lake Park on Channel 283A in lieu of Channel 239A, and at Westernport on Channel 266A in lieu of Channel 283A. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket No. 89–580, adopted August 21, 1995 and released September 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–23772 Filed 9–25–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF ENERGY

48 CFR Parts 933 and 970

RIN 1991–AB20

Acquisition Regulation; Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends the Department of Energy Acquisition Regulation (DEAR) to modify certain requirements for management and operating contractor subcontracting. This rule incorporates a revised clause and a new clause which minimizes obligations placed upon contractor purchasing systems and streamlines flowdown requirements for subcontracts awarded by management and operating contractors.

EFFECTIVE DATE: October 26, 1995.

FOR FURTHER INFORMATION CONTACT: James J. Cavanagh, Office of Contractor Management and Administration (HR–55), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; telephone 202–586–8257.

SUPPLEMENTARY INFORMATION:

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I. Background

On March 2, 1995, DOE published in the Federal Register (60 FR 11646) a notice of proposed rulemaking (NOPR). That notice proposed to amend the DEAR to identify certain purchasing system objectives and standards, eliminate the application of the ''Federal norm,'' place greater reliance on commercial practices, and remove the provisions concerning General Accounting Office protest jurisdiction over management and operating contractor subcontract awards. The March 2, 1995 notice also reserved for further analysis the removal of DEAR Section 970.7104 and advised that an amendment to the rulemaking would be issued in the event portions of DEAR Section 970.7104 were to be retained and redesignated. Except for the

resolution of the analysis of DEAR Section 970.7104, the March 2, 1995 NOPR was finalized on June 2, 1995 (60 FR 28737).

On April 27, 1995, DOE published in the Federal Register (60 FR 20663) a notice amending the March 2, 1995 NOPR. Based on the Department's analysis, it was proposed to delete some items contained in DEAR Section 970.7104 and reorganize the remaining items, which were proposed to be retained in two subsections: a revised clause at 970.5204–22 and a new clause 970.5204–44. This final rule completes the process for revising DEAR Part 970.71 which had been initiated with the March 2, 1995 NOPR.

It is the intention of the Department to incorporate the revised and new clauses provided in today's final rule into existing management and operating contracts as soon as practicable after the effective date for today's rule.

II. Disposition of Comments

Comments on the April 27, 1995, amendment to the notice of proposed rulemaking were received from a total of seven entities: one is a DOE contracting activity, four are organizations awarded management and operating contracts, and two are entities which did not identify any affiliation with the Department. Some comments received are not discussed in the disposition of comments because they were nonsubstantive or editorial, offered no recommendations for consideration, or made recommendations outside the scope of this rulemaking. In addition, certain comments offered on the March 2, 1995 proposed rulemaking are discussed here because they address the disposition of comments which were related to Section 970.7104. It should be noted that the citations referenced in the disposition of comments are those reflected in the Federal Register publication dated April 27, 1995 (60 FR 20663). As a result of revisions incorporated in the final rule, some of the citations have changed.

Five commenters expressed opinions about the deletion of Section 970.7104 and the relocation of requirements on many of its subjects to the two clauses, the existing clause at 970.5204–22 and a new clause 970.5204–44. Two of the commenters stated that they support the goal of this rulemaking in making it easier for DOE's management and operating contractors to subcontract. However, because most of the requirements in Section 970.7104 have been redesignated and not eliminated, these two commenters believe that Section 970.7104 should be left intact. Two commenters believe that the added portions of the clause at 970.5204–22 should be retained but the new clause at 970.5204–44 should be deleted. A fourth commenter believes that DOE should require that subcontracts include the FAR subcontracts clause at 52.244–2 only, and the final commenter believes that, ''Those mandatory clauses laden the 'new commercial contracts' with far too many bureaucratic hurdles and far too many miles of red tape'' and should therefore be deleted.

Regarding the comments cited above, the purposes of the rulemakings should be revisited. The first objective was to eliminate the overarching ''Federal norm'' process requirements from the preaward stages of the management and operating contractor's purchasing system, which were located in DEAR subparagraph 970.7103(c)(3). The portion of Subpart 970.71 containing the ''Federal norm'' requirement was deleted by the final rule published on June 2, 1995 (60 FR 28737) and replaced with purchasing system objectives which, inter alia, place greater reliance on commercial practices. The second purpose of the rulemaking dealt with reassessing the need for and organization of certain specific requirements placed upon the purchasing systems of the Department's management and operating contractors.

The Department has performed a detailed review of each of the requirements of Section 970.7104 as it stood before this rulemaking. Unnecessary provisions were deleted, both in the context of entire subparagraphs and portions of subparagraphs. However, those provisions that have been retained in the clauses represent either statutory or regulatory flowdown requirements or a policy decision that the provision should be applied to the Department's M&O contracts or subcontracts. For example, the Department has retained the controls on the contractors' purchase and lease of real property as a matter of policy, respecting 41 USC 14 which requires agencies to have specific statutory authority for the purchase of real property. The Department believes that most of the provisions previously cited at Section 970.7104 are contractual obligations which are, therefore, more appropriately suited for a contract clause. To implement the changes made in this rulemaking, the process-oriented requirements applicable to contractors' purchasing systems are retained in a revised clause at 970.5204–22, and the flowdown requirements for subcontracts awarded by management and operating contractors are listed in the new clause at 970.5204–44.

Another commenter suggested the substitution of ''may'' for ''will'' and ''if any'' after ''clauses'' in the third sentence of paragraph (a) of the clause at 970.5204–22. The commenter believed that the proposed changes would allow inclusion of the clause in management and operating contracts with nonprofit organizations as well as profit-making firms, with the assumption that only profit-making contracts will have performance criteria and measures. That assumption is not correct. We expect all management and operating contracts to have performance criteria and measures and have not made the change.

One commenter asserts that paragraph (c), Acquisition of Real Property, of the clause at 970.5204–22 is unnecessary except as it may modify the clause at 952.217–70, Acquisition of Real Property. The clause at 952.217–70 does not provide sufficient guidance for DOE's management and operating contractors to properly treat the process of determining whether to purchase or lease real property. We have not made any changes.

Two commenters questioned the necessity of retaining any provision for notice of subcontract awards as is reflected in paragraph (d) of the revised clause at 970.5204–22. The requirement for notice arises in Section 304(b) of the Federal Property and Administrative Services Act of 1949 (''Act''), 41 U.S.C. 254(b). DOE has used certain statutory authorities available to it (Section 602(d)(13) of the Act (40 U.S.C. 474(d)(13)) to limit the application of the advance notice requirement to the specific instances listed at DEAR Section 970.7109. Those instances are important and are being retained. We have made no change.

A commenter recommends that paragraph (e), Audits of Subcontractors, of the proposed clause at 970.5204–22 be deleted as unnecessary if the contractor includes FAR 15.215–2 in ''appropriate subcontracts.'' We believe the commenter intended to refer to FAR 52.215–2, the Audit Negotiation clause. We find little similarity between the two provisions. Paragraph (e) provides for pre-award audits; authorization of management and operating contractors to use DCAA for audits; and directs the applicable cost principles. The FAR provides the contracting officer the right to examine and audit the contractors books and records. We have made no change.

Another commenter recommends the deletion of the second sentence of paragraph (e)(4) of the clause 970.5204–22 relating to allowable costs regarding the purchase or transfer from contractor-

affiliated sources. These regulatory controls prevent the conflict of interest inherent in a management and operating contractor's purchasing goods and services in support of the DOE facility from affiliated organizations. The Department has reviewed this matter and has chosen to make no change.

A commenter suggests deleting paragraph (f), Bonds and Insurance, of clause 970.5204–22 and adding it instead to the clause 970.5204–32, Required bond and insurance—exclusive of Government property. The commenter explains the logic of the suggestion is ''to help bring the M&O Contractor's acquisition function into the mainstream of activity, rather than being considered a stepchild.'' It is unclear how this proposed change will accomplish the intended purpose. The clause at 970.5204–32 is designed to be included into the prime contract, and it controls the acquisition of bonds and insurance by the prime contractor. The provision listed in paragraph (f) establishes responsibilities and authorities in requiring bonds and insurance from subcontractors. We have made no change.

The same commenter recommends the deletion of paragraph (g), Buy American, of clause 970.5204–22 in the belief that the clause in the prime contract is sufficient. We disagree. The additional guidance on the treatment of the responsibilities of the Buy American Act is necessary. The FAR clause is drafted to deal with situations in which a Government contractor supplies goods to a Federal agency. DOE M&O contractors do not perform that function; instead, they purchase goods in the management and operation of the specific DOE facility. The Department, however, has made two changes to paragraph (g) of the clause 970.5204–22: (1) To include a statement on determinations of nonavailability which had previously been cited at Subsection 970.7104–22 and (2) to include reference to the DEAR clause at 970.5204–3 for construction materials.

The same commenter makes a series of comments that share the same theme. The commenter suggests that paragraphs (b), Acquisition of Utility Services; (h), Construction and Architect Engineer Contracts; (m), Leasing of Motor Vehicles; (n), Management, Acquisition, and Use of Information Resources; (p), Purchase of Special Items; (q), Purchase vs. Lease Determinations; (s), Set-Off and Assigned Subcontractor Proceeds; and (w), Unclassified Controlled Nuclear Information, be deleted from the clause 970.5204–22 and remain in Section 970.7104. We have made no change since the Department has chosen to eliminate Section 970.7104.

The same commenter objects to the treatment of Contractor-Affiliated Sources in paragraph (i) of the clause 970.5204–22 as continuing ''the apparent bias against large multi-segmented contractors.'' There is no bias in these provisions, apparent or otherwise. This area is of significance in maintaining credible oversight of $8 billion of subcontractor purchases by DOE's M&O contractors. This provision is a reference to the authority for, and limits of, such purchases stated at Section 970.7105. We have made no change.

The same commenter recommends the deletion of paragraph (j), Contractor-Subcontractor Relationship, of the clause 970.5204–22, as unnecessary. The Department believes that this paragraph provides clarity regarding the obligations of, and commitments made by, the prime contractor. We have made no change.

The same commenter suggests the deletion of paragraphs (k), Government Property; (o), Priorities, Allocations, and Allotments; (r), Quality Assurance; (u), Suspended, Debarred, or Ineligible Contractors; and (v), Termination, of the clause 970.5204–22. This commenter believes that each of these is unnecessary or redundant or both. We disagree, believing the guidance on most subjects to be necessary in the context of the award of individual subcontracts by a DOE M&O contractor. We have not made the changes recommended, except that paragraph (u) relating to Suspended, Debarred, or Ineligible Contractors has been deleted. To accomplish the intended purpose, a reference to the FAR counterpart (FAR 52.209–6) has been inserted at Section 970.5204–7.

The same commenter recommends the deletion of paragraph (t), Strategic and Critical Materials, of the clause 970.5204–22 because its application ''is not limited to subcontracting procedures.'' The Department disagrees. This provision sets forth authority for access to strategic and critical materials in the fulfillment of needs in the performance of the prime contract. We have made no change.

The same commenter questions the language of paragraph (l), Indemnification, of the clause 970.5204–22. We agree that, as proposed, the meaning of the provision was not clear. We have made editorial changes to assure it conveys its intended meaning that, other than the statutory Price-Anderson indemnity, M&O contractors may not offer subcontractors any indemnification without the required authorization.

Two commenters recommend that Section 970.7110, Nuclear Material Transfers, be incorporated into the clause at 970.5204–22. We agree that this choice is reasonable, but believe the subject to be sufficiently critical and special to warrant the coverage as it exists. We have made no change.

Three commenters oppose the creation of the new clause 970.5204–44, believing the identification of the flowdown provisions should be left to the contractors. The Department disagrees. A list of the flowdown provisions and reference to the regulations controlling their application simplifies the subcontracting process, clarifies the contractors' obligations in the award of subcontracts, and provides a meeting of the minds between DOE and the M&O contractor about the treatment of the subjects covered in the clause 970.5204–44 in the award of subcontracts.

Another commenter recommends the deletion of the following seven paragraphs in the new clause 970.5204–44 in order to better establish commercial acquisition systems: (4), Contract Work Hours and Safety Standards Act; (5), Cost or Pricing Data; (8), Davis Bacon Labor Standards for Construction; (11) Equal Employment Opportunity; (16), Organizational Conflicts of Interest; (22) Service Contract Act; and (23), Small Business and Small Disadvantaged Business Concerns. Each of these provisions either require treatment of the subject in recognition that the clauses themselves may not apply to the DOE M&O contractor, but do apply to subcontracts awarded by the M&O contractor, *e.g.*, Davis Bacon provisions; or are statutory flowdown requirements applicable to subcontractors. We have made no change.

One commenter asks where the material originally at paragraph 970.7104–28(f) is to be relocated. That material is incorporated at paragraph (h) of the clause at 970.5204–22. The same commenter has recommended that the subject of differing site conditions be covered. The Department disagrees, believing it is more appropriate to leave such a matter to the discretion of the M&O contractor.

In reviewing the April 27, 1995 amendment to the NOPR, it was noted that certain references had not been revised, information had inadvertently been omitted, or technical changes were required. Therefore, the following additional revisions are being made in this final rule:

(1) Part 933 is amended to conform section 933.104 with changes finalized in the June 2, 1995, final rule.

(2) The material proposed to be relocated to 970.1901 has been deleted. The two paragraphs were intended as communication to DOE contracting officers and we have decided to communicate this information internally by other means.

(3) The prescription for Subsection 970.5203–1, Covenant against contingent fees, is amended to delete a flowdown requirement.

(4) The introductory text for the clauses at 970.5204–21, 970.5204–24, 970.5204–45 and 970.5204–50 which referenced Section 970.7104 is removed.

(5) The clause 970.5204–22 is amended at paragraphs (a) and (d); requirements previously cited at paragraph (d), Advance notice of proposed subcontract awards, relating to file documentation is relocated to paragraph (a).

(6) The clause 970.5204–22 is amended at paragraphs (e)(3) and (e)(4). The last sentence of paragraph (e)(4), beginning with ''In no case, however, * * *'' is moved to the end of paragraph (e)(3). The change corrected an error in the Amendment to the NOPR published on April 27, 1995.

(7) Clause 970.5204–22 is amended at paragraph (f), Bonds and Insurance, to include a discussion on performance bonds which had inadvertently been deleted. The paragraph on corporate sureties has been rewritten to simplify the language.

(8) Paragraph (g) of the clause at 970.5204–22 has been changed to allow the Head of Contracting Activity rather than the Procurement Executive to approve management and operating contractor determinations of nonavailability. The threshold for referral to the HCA has been increased from $25,000 to $100,000.

(9) Clause 970.5204–22 is amended at paragraph (n) to retain the discussion of make-or-buy plans that had been set forth at now deleted paragraph 970.7104–8(b).

(10) Paragraph (v), Suspended, Debarred or Ineligible Contractors, is deleted from clause 970.5204–22 and a new clause is inserted at 970.5204–7 to provide instructions for the inclusion of FAR clause 52.209–6, Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in the management and operating contractor prime contract. This change is made to provide for consistency with FAR requirements.

(11) Subparagraph (b)(15), Officials Not to Benefit, of clause 970.5204–44 is removed as proposed in the Amendment to the NOPR published on April 27, 1995.

(12) Subparagraph (b)(24), Taxes, is amended to provide requirements for both cost-reimbursement and fixed-price subcontracts.

In addition, the Department streamlined the wording of the requirements listed in paragraphs (b) through (w) of the clause 970.5204–22. These revisions have not resulted in substantive changes to the requirements as stated in the April 27, 1995 Amendment to the NOPR.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), the Department of Energy has determined that this final rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

C. Review Under the Paperwork Reduction Act

To the extent that new information collection or record keeping requirements are imposed by this rulemaking, they are provided for under Office of Management and Budget paperwork clearance package No. 1910–0300. No new information collection is proposed by this rule.

D. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE concluded that the rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. Accordingly, DOE certified that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared. DOE did not receive any comments on this certification.

E. Review Under Executive Order 12612

Executive Order 12612 entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department of Energy has determined that this final rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 48 CFR Parts 933 and 970

Government procurement.

Issued in Washington, D.C. on September 20, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 933—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for Part 933 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

§ 933.104 [Amended]

2. Section 933.104, Protests to GAO, is amended in paragraph (b)(1), by removing from the first sentence the phrase ''Except in the case of a subcontract level protest,'' and by removing the last sentence of the paragraph, and paragraph (c), Protests after award, remove paragraph (c)(1) and remove the paragraph designation (c)(2).

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

§ 970.5203–1 [Amended]

4. In Section 970.5203–1, Covenant against contingent fees, the phrase ''with the addition of the following paragraph,'' is removed and clause paragraph (c) is removed.

5. Section 970.5204–7, is added to read as follows:

§ 970.5204–7 Protecting the Government's interest when subcontracting with contractors debarred, suspended, or proposed for debarment.

Include the clause at FAR 52.209–6 as prescribed in FAR 9.409(b).

§ 970.5204–21 [Amended]

6. Section 970.5204–21, Property, the phrase ''As prescribed in 970.7104–43,'' is removed from the introductory text.

7. Section 970.5204–22, is revised to read as follows:

§ 970.5204–22 Contractor purchasing system.

Insert the following clause.

Contractor Purchasing System (Oct 1995)

(a) *General.* The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause, 48 CFR (DEAR) 970.5204–44, and 48 CFR (DEAR) 970.71. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR (DEAR) 970.7102. The contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (w) of this clause.

(b) *Acquisition of Utility Services.* Utility services shall be acquired in accordance with the requirements of 48 CFR (DEAR) 970.0803.

(c) *Acquisition of Real Property.* Real property shall be acquired in accordance with 48 CFR (DEAR) Subpart 917.74.

(d) *Advance Notice of Proposed Subcontract Awards.* Advance notice shall be provided in accordance with 48 CFR (DEAR) 970.7109.

(e) *Audit of Subcontractors.*

(1) The contractor shall provide for:

(i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and

(ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The contractor shall provide, in appropriate cases, for the timely involvement of the contractor and the DOE contracting officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of FAR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR (DEAR) Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR (DEAR) 970.7105 and 48 CFR (DEAR) 970.3102–15(b).

(f) *Bonds and Insurance.*

(1) The contractor shall require performance bonds in penal amounts as set forth in FAR 28.102–2(a) for all fixed priced and unit-priced construction subcontracts in excess of $25,000. The contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.

(2) A payment bond shall be obtained on Standard Form 25A, modified to name the contractor as well as the United States of America as obligees, for all fixed price, unit-price and cost-reimbursement construction subcontractors in excess of $25,000. The penal amounts shall be determined as set forth in FAR 28.102–2(b).

(3) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) *Buy American.* The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR (DEAR) 970.5203–3 and 48 CFR (DEAR) 970.5204–3. The contractor shall forward determinations of nonavailability of individual items to the DOE contracting officer for approval. Items in excess of $100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items valued at $100,000 or less.

(h) *Construction and Architect-Engineer Subcontracts.*

(1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) *Specifications.* Specifications for construction shall be prepared in accordance with the DOE publication entitled ''General Design Criteria Manual.''

(3) *Prevention of Conflict of Interest.*

(i) The contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a ''turnkey'' subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the

subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) *Contractor-Affiliated Sources.* Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR (DEAR) 970.7105.

(j) *Contractor-Subcontractor Relationship.* The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.

(k) *Government Property.* Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of FAR Part 45, 48 CFR (DEAR) 945, the Federal Property Management Regulations 41 CFR 101, the DOE Property Management Regulations 41 CFR 109, and their contracts.

(l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Procurement Executive.

(m) *Leasing of Motor Vehicles.* Contractors shall comply with FAR 8.11 and 48 CFR (DEAR) 908.11.

(n) *Make-or-Buy Plans.* Acquisition of property and services shall be obtained on a least-cost basis, consistent with the requirements of the Make-or-Buy Plan clause of this contract and the contractor's approved make-or-buy plan.

(o) *Management, Acquisition and Use of Information Resources.* Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.

(p) *Priorities, Allocations and Allotments.* Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) *Purchase of Special Items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR (DEAR) 908.71 and the Federal Property Management Regulations, 41 CFR 101:

(1) Motor vehicles—48 CFR 908.7101
(2) Aircraft—48 CFR 908.7102
(3) Security Cabinets—48 CFR 908.7106
(4) Alcohol—48 CFR 908.7107
(5) Helium—48 CFR 908.7108
(6) Fuels and packaged petroleum products—48 CFR 908.7109
(7) Coal—48 CFR 908.7110
(8) Arms and Ammunition—48 CFR 908.7111
(9) Heavy Water—48 CFR 908.7121(a)
(10) Precious Metals—48 CFR 908.7121(b)
(11) Lithium—48 CFR 908.7121(c)
(12) Products and services of the blind and severely handicapped—41 CFR 101–26.701
(13) Products made in Federal penal and correctional institutions—41 CFR 101–26.702

(r) *Purchase vs. Lease Determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:

(1) at time of original acquisition;
(2) when lease renewals are being considered; and
(3) at other times as circumstances warrant.

(s) *Quality Assurance.* Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) *Setoff of Assigned Subcontractor Proceeds.* Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR (DEAR) 932.803.

(u) *Strategic and Critical Materials.* The contractor may use strategic and critical materials in the National Defense Stockpile.

(v) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in FAR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the contractor shall settle such subcontracts in general conformity with the policies and principles in FAR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the contracting officer.

(w) *Unclassified Controlled Nuclear Information.* Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR Part 1017.

§ 970.5204–24 [Amended]

9. Section 970.5204–24, Subcontractor cost or pricing data, the phrase ''As prescribed in 970.7104–11,'' is removed from the introductory text.

10. Add new Section 970.5204–44, Flowdown of contract requirements to subcontracts, to read as set forth below:

§ 970.5204–44 Flowdown of contract requirements to subcontracts.

Insert the following clause.

Flowdown of Contract Requirements to Subcontracts (Oct 1995)

(a) The contractor shall include the clauses in paragraph (b) of this clause in appropriate subcontracts.

(1) To the extent that the clause is included in this prime contract, the contractor shall comply with that portion of the clause that directs application to subcontracts.

(2) To the extent that the clause is not included in this prime contract, or where it is included but there is no instruction for treatment in subcontracts, the contractor shall include the clause in accordance with applicable regulatory guidance which would apply if the subcontract were a prime contract with the Federal government.

(3) In all cases, where a regulation is cited, the contractor shall comply with the regulation in administration of the related clause.

(b) Clauses and related regulations.

(1) *Air Transportation by U.S.-Flag Carriers.* Clause at FAR 52.247–63.

(2) *Anti-Kickback Act of 1986.* Clause at FAR 52.203–7.

(3) *Clean Air and Water.* Clause at FAR 52.223–2, and follow the requirements of FAR 23.1.

(4) *Contract Work Hours and Safety Standards Act.* Clause at FAR 52.222–4, and follow the requirements of FAR 22.3.

(5) *Cost or Pricing Data.* Clause at 48 CFR (DEAR) 970.5204–24.

(6) *Cost and Schedule Control Systems.* Clause at 48 CFR (DEAR) 970.5204–50.

(7) *Cost Accounting Standards.* Clause at FAR 52.230–2, as prescribed in 48 CFR (DEAR) 970.30.

(8) *Davis-Bacon Act.* Clauses as directed at FAR 22.407, and follow the requirements of FAR 22.4 to the same extent that they would apply if the subcontract had been directly awarded by DOE. 48 CFR (DEAR) Subpart 922.4 and 48 CFR (DEAR) 970.2273 provide guidance to assist in determining the applicability of these regulations.

(9) *Employment of the Handicapped.* Clause at FAR 52.222–36, and follow the requirements of FAR 22.14.

(10) *Environmental and Occupational Safety and Health.* Clauses as prescribed in 48 CFR (DEAR) 970.2303–2.

(11) *Equal Employment Opportunity.* Clauses as prescribed in FAR 22.810, as applicable, and follow the requirements of FAR 22.8, 48 CFR (DEAR) 922.8, E.O. 11246 and 40 CFR Part 60.

(12) *Examination of Records by Comptroller General.* Clause at FAR 52.215–1.

(13) *Foreign Travel.* Clause at 48 CFR (DEAR) 970.5204–52.

(14) *Nuclear Hazards Indemnity.* Clause at 48 CFR (DEAR) 970.2870.

(15) *Organizational Conflicts of Interest.* Clause at 48 CFR (DEAR) 952.209–72.

(16) *Patent, Data and Copyrights.* Appropriate clauses as required by 48 CFR (DEAR) Parts 927 and 970.

(17) *Printing.* Clause at 48 CFR (DEAR) 970.5204–19.

(18) *Privacy Act.* Clauses at FAR 52.224–1 and FAR 52.224–2, and follow the requirements of FAR 24.1.

(19) *Record Retention.* Clause at 48 CFR (DEAR) 970.5204–9.

(20) *Safeguarding Classified Information.* Appropriate clauses as prescribed at 48 CFR (DEAR) 970.0404.

(21) *Service Contract Act.* Clauses at FAR 52.222–40 and FAR 52.222–41.

(22) *Small Business and Small Disadvantaged Business Concerns.* Clause at FAR 52.219–9.

(23) *Special Disabled and Vietnam Era Veterans.* Clause at FAR 52.222–35, and

follow the requirements of FAR Subpart 22.13.

(24) *Taxes.* Clause similar to 48 CFR (DEAR) 970.5204–23 cost-reimbursement. An appropriate tax clause covering tax matters should also be included in fixed-price subcontracts.

(25) *Termination.* Appropriate clause or clauses as set forth at FAR 52.249–1 through 52.249–14.

(c) *Other.* Omission from the foregoing list of contract flowdown provisions shall not be construed as waiving a requirement for the contractor to comply with a flowdown requirement for subcontracts appearing elsewhere in this contract.

§ 970.5204–45 [Amended]

11. Section 970.5204–45, Termination, the phrase ''As prescribed in 970.7104–30,'' is removed from the introductory text.

§ 970.5204–50 [Amended]

12. At 970.5204–50, Cost and schedule control systems, remove the phrase ''As prescribed in 970.7104–40,'' from the introductory text.

§ 970.7104 [Removed and Reserved]

13. Section 970.7104, Conditions of purchasing by management and operating contractors, including 970.7104–1 through 970.7104–47, is removed and reserved.

[FR Doc. 95–23739 Filed 9–25–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–29; Notice 6]

RIN 2127–AAOO

Federal Motor Vehicle Safety Standards; Stability and Control of Medium and Heavy Vehicles During Braking; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; correction of effective dates.

SUMMARY: On March 10, 1995, NHTSA published a final rule that amended Standard No. 105, *Hydraulic Brake Systems,* and Standard No. 121, *Air Brake Systems,* to require medium and heavy vehicles to be equipped with an antilock brake system (ABS) to improve the directional stability and control of these vehicles during braking. (60 FR 13216) The agency has since learned that the dates section of that document was incomplete because it does not set effective dates for the changes to Part 571.3 and Standard No. 101. Today's document corrects the dates section to address the effective dates for these amendments.

EFFECTIVE DATES: Effective September 26, 1995, the document published at 60 FR 13216 (March 11, 1995) is effective on March 1, 1999 for amendments to 49 CFR 571.105 and March 1, 1997 for amendments to 49 CFR 571.121. The amendments to 49 CFR Part 571.3 and to 49 CFR 571.101 become effective September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin L. Shaw, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–366–2992).

Issued on: September 21, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–23877 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 60, No. 186
Tuesday, September 26, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

7 CFR Part 3017

RIN 0503–AA12

Nonprocurement Debarment and Suspension

AGENCY: Department of Agriculture (USDA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USDA proposes to amend its regulations that implement Executive Order (E.O.) 12549, ''Debarment and Suspension.'' E.O. 12549 required executive departments and agencies to issue regulations, consistent with guidelines issued by the Office of Management and Budget (OMB), to establish governmentwide effect for an agency's nonprocurement debarment and suspension actions. These changes are being proposed to enhance USDA participation in the governmentwide nonprocurement debarment and suspension system by making appropriate modifications to the coverage of the regulations and clarifying the relationship of the regulations to other USDA procedures for establishing participant ineligibility for specific programs.

DATES: Comments must be received on or before November 27, 1995.

ADDRESSES: Comments should be sent to Assistant General Counsel, Research and Operations Division, Office of the General Counsel, U.S. Department of Agriculture, Washington, DC 20250–1400.

FOR FURTHER INFORMATION CONTACT: Gary W. Butler, Deputy Assistant General Counsel, Office of the General Counsel, (202) 720–2577.

SUPPLEMENTARY INFORMATION: As part of the Federal Government's initiatives to curb fraud, waste, and abuse, E.O. 12549, ''Debarment and Suspension,'' was signed on February 18, 1986. E.O. 12549 required executive departments and agencies to issue regulations to establish governmentwide effect for an agency's nonprocurement debarment and suspension actions. Section 3 of E.O. 12549 required that such regulations be consistent with guidelines issued by OMB.

On October 20, 1987, 20 executive departments and agencies published a proposed common rule (52 FR 39035–39042) which implemented the final OMB guidelines that had been published on May 29, 1987 (52 FR 20360–20369). USDA did not join the proposed common rule, but rather published a proposed rule that addressed some problems peculiar to USDA while being consistent with the OMB guidelines.

On May 26, 1988, 27 executive departments and agencies published a final common rule (53 FR 19159–19211) and OMB adopted the final common rule as its amended final guidelines. Upon reconsideration of the issue of joining the common rule, USDA published a final rule on January 30, 1989 (54 FR 4729), which followed the text of the final common rule published on May 26, 1988. However, USDA limited the scope of coverage of the rule (7 CFR Part 3017) to domestic assistance transactions and added material generally to reflect internal organization and procedures. Following extended consultations with OMB, USDA has determined that the coverage of this rule should be amended by removing the provision that limits the coverage of the rule to domestic assistance transactions. This change would make the scope of the USDA rule consistent with the scope of the common rule as adopted by most other agencies. However, USDA is proposing additional specific exceptions from coverage of the common rule, as implemented by USDA, that are deemed in the public interest. These exceptions are necessary because, for certain USDA programs, the benefits resulting from full application of the rule would be outweighed by potential programmatic harms that are explained in detail in the section-by-section analysis.

While proposing additional exceptions from coverage, USDA emphasizes that certain programs, including, but not limited to, those related to warehouse licensing; producer entitlements; predator control; grading; inspection; timber export; and public animal, and plant health or safety that would be affected by such exceptions are subject to existing statutes and regulations that provide exclusionary actions of various kinds that may be imposed by USDA for improper conduct. Accordingly, the fact that a USDA program may be excepted from the application of the nonprocurement debarment and suspension common rule would not preclude USDA from using such other authorities to exclude persons who violate certain statutes or USDA regulations from participation in such excepted programs. For example, this proposal would not in any manner restrict appropriate USDA officials' ability to: (1) Suspend or revoke licenses under the United States Warehouse Act; (2) determine ineligibility for payments under the provisions of section 1001B of the Food Security Act of 1985; (3) withdraw or suspend inspection services for violations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the regulations issued under the Federal Meat Inspection Act or the Poultry Products Inspection Act; (4) revoke licenses for violations of the Animal Welfare Act or the regulations issued under the Animal Welfare Act; (5) withdraw or suspend permits for the importation or transportation of organisms or vectors for violation of the Virus-Serum Toxin Act or the regulations issued under the Virus-Serum Toxin Act; (6) revoke or suspend licenses for the treatment of garbage under the Swine Health Protection Act or the regulations issued under the Swine Health Protection Act; (7) deny or withdraw grading and inspection services under the Agricultural Marketing Act of 1946; (8) refuse the payment of indemnity under the Act of May 29, 1884; (9) debar persons who violate the Forest Resources Conservation and Shortage Relief Act of 1990; or (10) impose civil monetary penalties, when authorized, for violations of acts and regulations administered by the Secretary of Agriculture. Moreover, in any case in which an administrative exclusion is considered under one or more of such other provisions, USDA will initiate, where appropriate, debarment or suspension under the common rule for the protection of the entire Government.

During the development of this proposed rule, questions were raised about the treatment under Part 3017 of the transactions with local non-governmental entities (such as nonprofit

child care centers and private schools) in the Child Nutrition Programs of the Food and Consumer Service. In particular, some have questioned the agency's position that these transactions constitute mandatory awards since there are nearly 200 of such entities currently denied participation in the Child Nutrition Programs based on their serious deficiencies in those programs. However, if viewed as mandatory awards, these transactions would be excluded from coverage both for purposes of certification and for eligibility for the awards (7 CFR 3017.110(a)(2)(i) and 3017.200(c)(1)) under Part 3017. It has been suggested that USDA require all non-governmental entities to complete the certification, even though the award itself might not be denied. While this rule does not propose any changes in these areas, the Department welcome comments on these questions. Further, as indicated above, whenever USDA takes an action to exclude a local non-governmental entity from participation in a Child Nutrition Program, USDA will consider initiating, where appropriate, debarment or suspension under the common rule for the protection of the entire Government.

For USDA programs subject to existing statutes and/or regulations permitting certain exclusionary actions, this proposed rule shall not affect actions taken under these statutes or regulations prior to the effective date of this rulemaking. Exclusionary actions taken prior to the effective date of this rulemaking shall be governed by the statutes and regulations then in effect.

Section-by-Section Analysis

Subpart A

Section 3017.110, Coverage

—*USDA proposes to amend § 3017.110, ''Coverage,'' by revising paragraph (a)(3), Department of Agriculture covered transactions,* which currently limits the coverage of the USDA nonprocurement debarment and suspension rule to domestic assistance covered transactions. This limitation would be removed, which would make the scope of the USDA rule consistent with the scope of the common rule as adopted by most other agencies. However, USDA is proposing additional specific exceptions from coverage of the common rule that are deemed in the public interest.

—*With respect to paragraph (a)(1), Covered transaction,* USDA proposes to state in paragraph (a)(3)(i) that, for USDA's export and foreign assistance programs, only primary covered transactions will be considered covered transactions for the purposes of these regulations. Any lower tier transactions with respect to such programs will not be considered lower tier covered transactions. Export programs in this context do not include transactions for the export or substitution of Federal timber pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (the ''Export Act''). In fact, the Export Act provides statutory authority for the head of the Forest Service to debar persons who violate the Export Act and/or regulations issued thereunder.

One effect of the proposed amendment will be that, although participants in primary covered transactions under these programs will have to provide the required certifications, there will be no certification requirements applicable to participants in lower tier transactions. This partial limitation from coverage for these programs is necessary because it is expected to be difficult, and in some cases impossible, for participants in primary covered transactions under these programs to obtain the necessary certifications from lower tier participants.

Lower tier participants in USDA's export and foreign assistance programs may include domestic suppliers, foreign or domestic agents, foreign or domestic parties involved in the transportation of the commodity, foreign or domestic subcontracted representatives, and foreign buyers of the commodity. The foreign entities that would be required to provide certifications may be unwilling to make certifications, and any certifications obtained may not be enforceable because these foreign entities will generally not be subject to U.S. laws. The different legal structures for organizations which may exist in foreign countries further complicate matters. For example, it may be difficult for a non-governmental foreign entity to identify its ''principals'' for purposes of providing the necessary certification. To impose an additional administrative burden upon foreign buyers would only encourage them to purchase from our competitors, thereby defeating the purpose of many of the USDA export programs.

The fungible nature of most of the commodities involved in the export and foreign assistance programs creates additional problems. Without the proposed amendment, participants in primary covered transactions under these programs (primarily exporters) would be required to obtain certifications from each supplier providing at least $100,00 worth of the commodities, services, or goods in connection with a covered transaction. (We note that 7 CFR Part 3017 applies to lower tier procurement contracts that equal or exceed the Federal procurement small purchase threshold. *See* 7 CFR § 3017.110(a)(1)(ii)(B). Pursuant to the providings of sections 4001 and 4003 of the Federal Acquisition Streamlining Act of 1994, this threshold and thus the level of expected lower tier procurement contracts has increased to $100,000.) This requirement would continue down the supply chain, with all such suppliers obtaining certifications from their suppliers, until a transaction amounting to less than $100,000 was reached. (However, it would be necessary to obtain a certification from a person participating in a transaction amounting to less than $100,000 under a covered transaction if that person will have a critical influence on or substantive control over that covered transaction. The $100,000 figure is used in this section-by-section analysis to simplify the discussion.) Downstream suppliers would, in some cases, be unable to provide the required certifications with respect to lower tier transactions. Suppliers generally obtain commodities from a variety of sources and store them commingled until they are sold. In some cases, it would be impossible for a supplier to determine the source of a particular quantity of a commodity in order to obtain the necessary certification from such source.

—*With respect to paragraph (a)(1)(ii)(B),* USDA proposes in paragraph (a)(3)(ii) to limit coverage of lower tier procurement contracts in the domestic food assistance programs to the initial procurement contracts and the first tier of subcontracts under those procurement contracts.

The current rule includes lower tier procurement contracts within the scope of coverage of this part. USDA recognizes the importance of maintaining lower tier coverage of the initial procurement contract and the first tier subcontract thereunder in order to protect the integrity of its domestic food assistance programs. However, extending lower tier coverage beyond these levels is unworkable because suppliers in these programs may provide food to a variety of outlets, obtain food from many different sources, and commingle the food before selling it to the outlets.

For example, in a domestic food assistance program such as the National

School Lunch Program, many school districts contract with food service management companies to provide school lunches. To ensure compliance with the requirements of the common rule for all lower tier covered transactions, not only would the food service management company have to provide a certification and agree not to knowingly contract with debarred or suspended companies, but certifications would also have to be obtained from the bakery which supplies the break to the food service management company, the food wholesaler which supplies the flour to the bakery, the flour mill which sells the flour to the wholesaler, the merchants who supply the wheat to the flour mill, and even the farmers (of which there will be many) who sell the wheat to the merchants. Given that at each level these products are typically commingled, it would be impossible to determine the precise outlet for each item for each of these lower tier transactions. Thus, each entity would need to obtain certifications from all of its suppliers to ensure compliance with the common rule. This certification requirement would continue down the chain of contracts until the $100,000 limit is reached. Such a requirement would be an onerous and unreasonable burden on commerce.

—*With respect to paragraph (a)(2),* USDA proposes in paragraph (a)(3)(iii) to provide an exception from the coverage of this part for transactions under programs that provide statutory entitlements and make available loans to individuals and entities in their capacity as agricultural producers. This exception would not apply to transactions under programs that provide loans or other assistance to recipients for business or industrial purposes. The proposed exception is necessary in order to avoid the imposition of unnecessary and unduly burdensome certification requirements upon participants in these programs and to relieve them of the burden of trying to determine when a certification would even be required.

In addition, with respect to entitlement and farm lending programs, these producers would have to obtain certifications from all persons or entities with whom they do business involving at least $100,000. This requirement would increase regulatory burdens on producers and put the Consolidated Farm Service Agency (CFSA) in the position of partially regulating all of the producers' business transactions from purchasing inputs to selling commodities.

For a typical farming operation, lower tier transactions could easily include payments to landlords or mortgage companies, seed dealers, fertilizer dealers, herbicide/insecticide suppliers, equipment dealers (implement purchases or equipment leasing arrangements), petroleum suppliers (gasoline and diesel fuel), irrigation input suppliers (including well digging and electricity), custom services (custom farming, heavy equipment work, custom fertilizer or herbicide application, and custom harvesting), and commodity sales/marketing services. Most individual producers will not have the economic clout to require suppliers to provide these certifications. Even if they were able to obtain such certifications, given the number of suppliers that could be involved, it would be a substantial administrative burden on producers to collect these certifications.

Furthermore, producers would be required to agree not to knowingly do business with a debarred party. Yet, a producer may have little choice in a situation where a major input supplier, such as a seed company or cooperative, becomes debarred, the debarment is widely publicized, and it is the only supplier through which the producer is able to obtain required inputs.

—*Also under paragraph (a)(2),* USDA proposes in paragraph (a)(3)(iii) to provide an exception from the coverage of this part for transactions under conservation programs.

This proposed exception is necessary to avoid the same type of lower tier certification problems which were discussed with respect to farm entitlement and farm lending programs. In addition, because many of USDA's conservation programs, such as the Agricultural Conservation Program, have relatively low dollar limits for payment, it is quite possible that the certification requirements would remove any incentive producers would have to participate in these programs. This result would be contrary to the objective of promoting the stewardship of land through conservative incentives designed to encourage pollution abatement and land conservation practices, thus providing a benefit to the general public rather than to the individual participants only.

—*Also under paragraph (a)(2),* USDA proposes in paragraph (a)(3)(iii) to provide an exception from the coverage of this part for transactions under warehouse licensing programs.

In the absence of this proposed exception, the burden imposed upon participants in the warehouse licensing programs would be substantial. It would be impossible for warehousemen to obtain lower tier certifications with respect to most of their commodity transactions because commodities like fertilizer, wheat, and feed grains are generally stored and merchandized from a commingled, fungible mass. In addition, the warehouseman is required to store commodities on a non-discriminatory basis and performs a public service by assuring that a farmer has a facility, which is bonded and meets federal licensing requirements, available to store and market commodities.

—*Also under paragraph (a)(2),* USDA proposes in paragraph (a)(3)(iii) to provide exceptions from the coverage of this part for the receipt of licenses, permits, certificates, and indemnification under regulatory programs in the interest of public health and safety, and animal and plant health and safety. In addition, this paragraph would provide exceptions for the provision by State or local governments of official grading and inspection services, animal damage control services, and public health and safety and animal and plant health and safety inspection services, and the receipt of official grading and inspection services, animal damage control services, and public health and safety and animal and plant health and safety inspection services.

USDA conducts a number of programs and provides certain services that are designed to protect public health and safety, protect animal and plant health and safety, control predators, and provide markets for agricultural products that are fair and free of deceptive trade practices. In many instances, USDA's inability to conduct these programs with and provide these services to persons who have been debarred would undermine USDA's ability to protect public health and safety, protect animal and plant health and safety, control predators, and provide markets for agricultural products that are fair and free of deceptive trade practices. This inability to engage in nonprocurement transactions with debarred persons may injure not only the debarred person, but may also injure persons who are not debarred.

The following are examples of injuries to public health and safety, animal and plant health and safety, predator control, and fair and free markets that may result because of USDA's inability to engage in nonprocurement transactions with debarred persons.

USDA conducts an animal damage control program under which persons who have suffered losses from predators may receive assistance from USDA with the control of the predators on that person's property. USDA's inability to provide predator control assistance to debarred persons would not only injure the debarred individual, but would also injure all persons who are within the range of the predators on the debarred person's premises.

USDA conducts numerous programs designed to prevent the spread of plant and animal diseases and pests. In many circumstances, USDA has no authority to require individuals to destroy animals or plants that are infected with or exposed to disease. USDA does have authority under certain circumstances to pay indemnity to producers who voluntarily destroy plants or animals that are infected with or exposed to disease. USDA's inability to pay indemnity to debarred producers who voluntarily destroy animals or plants infected with or exposed to disease may result in the continued existence of foci of infection and the spread of animal and plant diseases to animals and plants owned by persons who have not been debarred.

USDA issues licenses and permits for animal biologics, such as vaccines or diagnostics. In order to ship animal biologics, persons must first obtain either a license or a permit from USDA. USDA's inability to grant licenses or permits to debarred persons could result in the unavailability of products necessary for the protection of animal and public health.

USDA grades products in order to correct market inefficiencies arising from the lack of information about quality or performance of agricultural products. USDA's grading programs benefit producers of quality products by increasing consumer acceptance of agricultural products and increasing the likelihood that the producer will receive more for graded quality products than for similar ungraded products. Grading benefits consumers by providing consumers with information regarding the quality and performance of the graded products. USDA's inability to provide grading services to debarred producers could result in the inability to sell ungraded products, a reduction of graded products in the market place, and a reduction in the information consumers have available regarding the quality and performance of agricultural products.

—*Also under paragraph (a)(2),* USDA proposes in paragraph (a)(3)(iii) to provide an exception from the coverage of this part for permits, licenses, exchanges, and other acquisitions of real property, rights of way, and easements under natural resource management programs. This paragraph would except such transactions from coverage because the value derived from the application of the rule which precludes doing business with debarred and suspended persons is outweighed by the fact that, in many such transactions, fair market value is exchanged and, in many others, royalty systems operate to return significant reserves or cash to the United States from fees collected for the use of these lands, uses which have been determined to be in the best interest of sound land and resource management.

Further, the benefits of applying this rule are significantly outweighed by the inability to efficiently manage and administer the rule, as hundreds of thousands of permits are issued under natural resource programs annually for which nominal benefits are received by permittees.

Section 3017.115, Policy

—*USDA proposes to amend § 3017.115, ''Policy,'' by adding a new paragraph (d)* to provide that, in any case in which an administrative exclusion is considered under an authority other than this rule, USDA will initiate, where appropriate, a debarment or suspension action under this rule for the protection of the entire Federal Government.

Subpart B

Section 3017.200, Debarment or Suspension

—*USDA proposes to amend § 3017.200(c)* to reflect the exceptions to coverage to be inserted in § 3017.110(a)(3).

Impact Analysis

Executive Order 12866

This proposed rule has been determined to be ''significant,'' and it has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that, for each rule with a ''significant economic impact on a substantial number of small entities,'' an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on the small entities.

USDA certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

USDA certifies that this proposed rule would not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

List of Subjects in 7 CFR Part 3017

Administrative practice and procedure, Drug abuse, Grant administration, Grant programs (Agriculture), Loan programs, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, USDA proposes to amend 7 CFR Part 3017 as follows:

PART 3017—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for Part 3017 would be revised to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 701 *et seq.;* E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

2. Section 3017.110 would be amended by revising paragraph (a)(3) to read as follows:

§ 3017.110 Coverage.

(a) * * *

(3) *Department of Agriculture covered transactions.* (i) With respect to paragraph (a)(1) of this section, for USDA's export and foreign assistance programs, covered transactions will include only primary covered transactions. Any lower tier transactions with respect to USDA's export and foreign assistance programs will not be considered lower tier covered transactions for the purposes of this part. The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (the ''Export Act''), is specifically excluded from the coverage of this rule. The Export Act provides separate statutory authority to debar persons engaged in both primary covered transactions and lower tier transactions.

(ii) With respect to paragraph (a)(1)(ii)(B) of this section, for USDA's domestic food assistance programs, only the initial such procurement contract and the first tier subcontract under that procurement contract shall be

considered lower tier covered transactions.

(iii) With respect to paragraph (a)(2) of this section, the following USDA transactions also are not covered: transactions under programs which provide statutory entitlements and make available loans to individuals and entities in their capacity as producers of agricultural commodities; transactions under conservation programs; transactions under warehouse licensing programs; the receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety and animal and plant health and safety; the receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services; if the person is a State or local government, the provision of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services; and permits, licenses, exchanges and other acquisitions of real property, rights of way, and easements under natural resource management programs.

* * * * *

3. Section 3017.115 would be amended by adding a new paragraph (d) to read as follows:

§ 3017.115 Policy.

* * * * *

(d) In any case in which an administrative exclusion is considered under an authority other than this part, USDA will initiate, where appropriate, a debarment or suspension action under this part for the protection of the entire Federal Government.

4. Section 3017.200 would be amended by adding a new paragraph (d) to read as follows:

§ 3017.200 Debarment or suspension.

* * * * *

(d) *Department of Agriculture excepted transactions.* With respect to paragraph (c) of this section, the following USDA transactions also are excepted: transactions under programs which provide statutory entitlements and make available loans to individuals and entities in their capacity as producers of agricultural commodities; transactions under conservation programs; transactions under warehouse licensing programs; the receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety and animal and plant health and safety; the receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services; if the person is a State or local government, the provision of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services; and permits, licenses, exchanges, and other acquisitions of real property, rights of way, and easements under natural resource management programs.

Dated: September 15, 1995.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 95–23508 Filed 9–25–95; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–91–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes. This proposal would require installation of hydraulic line restrictors in the main landing gear (MLG), and modification of the hydraulic damper assembly of the MLG. This proposal is prompted by reports of vibration occurring in the MLG during landing; in some cases, such vibration has led to the collapse of the MLG. The actions specified by the proposed AD are intended to prevent incidents of vibration in the MLG, which can adversely affect the integrity of the MLG.

DATES: Comments must be received by November 21, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–91–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No.

95–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports from operators of McDonnell Douglas Model DC–9–80 series airplanes who have experienced incidents of severe vibration of the main landing gear (MLG) when brakes are applied during landing. The vibration resulted in separation of the torque link and breakage at the apex joint. In three of these incidents, the MLG collapsed. Investigation revealed that the collapse resulted from torsional vibration in the MLG, which was induced by interaction between the landing gear and the brake antiskid system.

The FAA also has received a report indicating that a MLG failed due to fatigue failure of the MLG shock strut cylinder. Investigation revealed that a fore and aft vibration of the MLG can occur when brakes are applied. As in the other incidents, this vibration is caused by the interaction of the landing gear and the brake antiskid system. Such vibration causes higher than expected stress levels in the MLG shock strut cylinder, and can lead to the subsequent fatigue failure of the cylinder.

These conditions, if not corrected, can adversely affect the integrity of the MLG.

The FAA has reviewed and approved the following McDonnell Douglas Service Bulletins:

1. Service Bulletin MD80–32–276, dated March 31, 1995: This document describes procedures for the installation of brake line restrictors on airplanes not currently equipped with them. This installation will minimize the possibility of both the torsional and the fore and aft vibration that results from the interaction of the landing gear and the antiskid system.

2. Service Bulletin MD80–32–278, dated March 31, 1995: This document describes procedures to replace and modify the hydraulic damper assembly. The replacement or modification entails removing the shims located between the cap and damper assembly housing; increasing the torque on the damper housing assembly bolts; and replacing or modifying the damper assembly components to increase the volume of fluid passing between the two damper chambers. This modification significantly increases the damping capability of this unit and consequently reduces the possibility of torsional vibration in the MLG assembly.

Accomplishing the actions described in these two service bulletins will have a combined effect to:

1. substantially reduce the amount of vibration in the MLG,

2. improve the effectiveness of the high energy damper, and

3. minimize the possibility of incidents of extreme vibration on these airplanes, which can lead to damage to the MLG and the airframe.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installation of MLG brake system hydraulic line restrictors, and modification or replacement of the MLG hydraulic damper assembly. The actions would be required to be accomplished in accordance with the two service bulletins described previously.

There are approximately 1,100 Model DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 600 airplanes of U.S. registry would be affected by this proposed AD.

Accomplishment of the installation of the brake line restrictor, as described in McDonnell Douglas Service Bulletin MD80–32–276, would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $928 per airplane. Based on these figures, the total cost impact of this proposed installation action on U.S. operators is estimated to be $700,800, or $1,168 per airplane.

Accomplishment of the modification of the hydraulic damper assembly, as described in McDonnell Douglas Service Bulletin A32–278, would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $4,000 per airplane. Based on these figures, the total cost impact of this modification action on U.S. operators is estimated to be $2,616,000, or $4,360 per airplane.

Based on the figures discussed above, the FAA estimates that the total cost impact of this proposed AD on U.S. operators would be $3,316,800, or $5,528 per airplane. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 95–NM–91–AD.

Applicability: Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) series airplanes, and Model MD–88 airplanes; certificated in any category; and listed in the following McDonnell Douglas Service Bulletins:

McDonnell Douglas MD–80 Service Bulletin MD80–32–276, dated March 31, 1995; and

McDonnell Douglas MD–80 Service Bulletin MD80–32–278, dated March 31, 1995.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority

provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To reduce the possibility of vibration in the main landing gear (MLG) that can adversely affect its integrity, accomplish the following:

(a) For airplanes listed in McDonnell Douglas MD–80 Service Bulletin MD80–32–276, dated March 31, 1995, that have not been previously modified (installation of brake line restrictors) in accordance with McDonnell Douglas MD–80 Service Bulletin 32–246: Within 9 months after the effective date of this AD, install filtered restrictors in the MLG hydraulic brake system in accordance with McDonnell Douglas MD–80 Service Bulletin MD80–32–276, dated March 31, 1995.

(b) For airplanes listed in McDonnell Douglas MD–80 Service Bulletin MD80–32–278, dated March 31, 1995: Within 36 months after the effective date of this AD, modify the hydraulic damper assembly (by removing shims, increasing bolt torque, and incorporating changes to increase the volume of fluid passing between the two damper chambers) in accordance with McDonnell Douglas MD–80 Service Bulletin MD80–32–278, dated March 31, 1995 .

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 20, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–23808 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–118–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes, that currently requires inspection and replacement of certain suspect horizontal stabilizer primary trim motors. That AD was prompted by an analysis which revealed that certain incorrectly manufactured motor shafts could fail prematurely and, in turn, cause the primary trim motor to fail. The actions specified in that AD are intended to prevent such failures of the primary trim motor, which could ultimately result in reduced controllability of the airplane. This action would expand the applicability of the existing AD to include additional airplanes.

DATES: Comments must be received by November 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60); or Sundstrand Aerospace, 4747 Harrison Avenue, P.O. Box 7002, Rockford, Illinois 61125–7002. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–118–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 8, 1995, the FAA issued AD 95–06–04, amendment 39–9174 (60 FR 15034, March 22, 1995), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes, to require inspection and replacement of certain suspect horizontal stabilizer primary trim motors. That action was prompted by an analysis which revealed that certain incorrectly manufactured motor shafts could fail prematurely and, in turn, cause the primary trim motor to fail. The requirements of that AD are intended to prevent such failures of the primary trim motor, which could ultimately result in reduced controllability of the airplane.

Since the issuance of that AD, the FAA received a report indicating that an additional lot of motor output shafts was not subjected to a hardening

process (heat treatment) during manufacture. Without this hardening process, the defective output shafts may experience excessive wear, which could lead to failure of the shaft and, consequently, failure of the trim motor. A shaft failure in the primary trim motor could also result in the inability of the trim gearbox to transmit the input from the alternate trim motor. This condition, if not corrected, could result in the loss of all stabilizer trim and subsequent reduced controllability of the airplane. No failures have actually occurred in service, however.

The FAA has reviewed and approved McDonnell Douglas MD–80 Alert Service Bulletin A27–342, Revision 1, dated May 15, 1995. The inspection and replacement procedures described in this revision are identical to those described in the original issue of the alert service bulletin (which was referenced in AD 95–06–04). However, this revision expands the effectivity listing to include additional airplanes that are subject to the addressed unsafe condition. This revision also contains minor editorial changes.

The FAA also has reviewed and approved Sundstrand Service Bulletin 9590–27–012, dated August 8, 1995, which describes procedures for modifying the brake motor. The modification involves replacing the coupling in the brake motor with a coupling that has been heat-treated and testing the brake motor. Accomplishment of this modification will extend the service life of the brake motor.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–06–04 to continue to require inspection and replacement of certain suspect horizontal stabilizer primary trim motors. This action would expand the applicability of the existing AD to include additional airplanes. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

There are approximately 142 Model DC–9–80 series airplanes of the affected design in the worldwide fleet. The FAA estimates that a total of 73 airplanes of U.S. registry would be affected by this proposed AD.

The inspection of the horizontal stabilizer primary trim motor is expected to take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of this requirement is estimated to be $60 per airplane.

The actions specified in this proposed rule previously were required by AD 95–06–04, which was applicable to approximately 13 U.S.-registered airplanes. Based on the figures discussed above, the total cost impact of the current requirements of that AD on U.S. operators is estimated to be $390. In consideration of the compliance time and effective date of AD 95–06–04, the FAA assumes that the operators of the 13 airplanes subject to that AD have already initiated the required actions. The proposed AD action would add no new costs associated with those airplanes.

This proposed action would be applicable to approximately 60 additional airplanes. Based on the figures discussed above, the total new costs to U.S. operators that would be imposed by this new AD are estimated to be $3,600. This figure is based on assumptions that no operator of these additional airplanes has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Replacement of suspect motors, if necessary, would require 5 work hours to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by Sundstrand Electric Power Systems (the manufacturer of the horizontal stabilizer primary trim motors) at no charge to operators. Based on these figures, the total cost impact on U.S. operators for the replacement of suspect motors is estimated to be $300 per airplane.

Should an operator elect to modify a suspect motor, that action would require 4 work hours to disassemble, modify, reassemble, and test the motor (excluding removal and reinstallation of the motor from the airplane). The average labor rate is $60 per work hour. Required parts would be provided by Sundstrand at no charge to operators. Based on these figures, the total cost impact on U.S. operators for modification of a suspect motor is estimated to be $240 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9174 (60 FR 15034, March 22, 1995), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 95–NM–118–AD. Supersedes AD 95–06–04, Amendment 39–9174.

Applicability: Model DC–9–80 series airplanes; as listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, dated August 4, 1994, and in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, Revision 1, dated May 15, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition

addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Paragraph (a) of this AD merely restates the requirements of paragraph (a) of AD 95–06–04, amendment 39–9174. As allowed by the phrase, ''unless accomplished previously,'' if those requirements of AD 95–06–04 have already been accomplished, this AD does not require that those actions be repeated.

To prevent failure of the horizontal stabilizer primary trim motor, accomplish the following:

(a) For airplanes listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, dated August 4, 1994: Within 6 months after April 21, 1995 (the effective date of AD 95–06–04, amendment 39–9174), conduct a visual inspection of the horizontal stabilizer primary trim motor to determine if the motor is identified with one of the suspect serial numbers listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, dated August 4, 1994, or Revision 1, dated May 15, 1995. Conduct this inspection in accordance with the procedures specified in that service bulletin.

(1) If the horizontal stabilizer primary trim motor is not identified with a suspect serial number, no further action is required by this AD.

(2) If the horizontal stabilizer primary trim motor is identified with a suspect serial number, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace the motor in accordance with the McDonnell Douglas alert service bulletin. Or

(ii) Modify the motor in accordance with Sundstrand Service Bulletin 9590–27–012, dated August 8, 1995; and install the modified motor in accordance with the McDonnell Douglas alert service bulletin.

(b) For airplanes listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, Revision 1, dated May 15, 1995, and not subject to paragraph (a) of this AD: Within 6 months after the effective date of this AD, conduct a visual inspection of the horizontal stabilizer primary trim motor to determine if the motor is identified with one of the suspect serial numbers listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, Revision 1, dated May 15, 1995. Conduct this inspection in accordance with the procedures specified in that service bulletin.

(1) If the horizontal stabilizer primary trim motor is not identified with a suspect serial number, no further action is required by this AD.

(2) If the horizontal stabilizer primary trim motor is identified with a suspect serial number, prior to further flight, accomplish either paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Replace the motor in accordance with the McDonnell Douglas alert service bulletin. Or

(ii) Modify the motor in accordance with Sundstrand Service Bulletin 9590–27–012, dated August 8, 1995; and install the modified motor in accordance with the McDonnell Douglas alert service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 20, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–23809 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1309 and 1310

[DEA–133P]

RIN 1117–AA29

Waiver of Requirements for the Distribution of Prescription Drug Products That Contain List I Chemicals

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed rule.

SUMMARY: DEA is proposing to amend its regulations to waive the registration requirement for persons who distribute prescription drug products that are subject to regulation as List I chemicals and to allow that the records required to be maintained pursuant to the Federal Food and Drug Administration (FDA) guidelines for prescription drug products shall be deemed adequate for satisfying DEA's recordkeeping requirements with respect to distribution. In response to requests from industry, DEA has conducted a review and determined that such prescription drug products are already subject to extensive regulatory controls regarding their distribution and are not presently identified as a significant source for diversion of List I chemicals to the illicit manufacture of controlled substances. This proposed action will relieve a large population of distributors and manufacturers of regulated prescription drug products containing List I chemicals from the burden of compliance with regulations in circumstances where compliance would be unnecessary for enforcement of the law.

DATES: Comments or objections must be received on or before November 27, 1995.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The Domestic Chemical Diversion Control Act of 1993 (PL 103–200) (DCDCA) amended Section 802(39) of the Controlled Substances act (21 U.S.C. 801 et seq.) (CSA) to remove drug products that contain either ephedrine as the sole medicinal ingredient or ephedrine in combination with therapeutically insignificant amounts of another medicinal ingredient (hereinafter regulated ephedrine drug products) from the exemption granted to drug products that contain a List I chemical that may be marketed or distributed under the Federal Food, Drug and Cosmetic Act (FDCA). As a result of this and the removal of the ephedrine threshold, all distributions, importations and exportations of regulated ephedrine drug products became subject to the chemical registration, recordkeeping and reporting requirements of the CSA. The intent of these actions was to establish a system of controls to prevent the diversion of regulated ephedrine drug products for the illicit manufacture of controlled substances.

DEA has received a number of comments from pharmaceutical companies expressing concerns regarding the application of the new controls to the distribution of prescription drug products that are subject to regulation. Primary among the concerns are: (1) The burdens associated with compliance with the registration and recordkeeping requirements, including the financial burden associated with converting existing systems to satisfy the new requirements; (2) existing Federal and state controls severely restrict the manufacture, distribution or dispensing of the

products, and; (3) the lack of any evidence that the products are being diverted for the illicit manufacture of controlled substances.

In response to industry's concerns and in the interest of limiting regulatory burdens to those necessary for the enforcement of the law, DEA has reviewed the need for applying the chemical registration requirement on persons who distribute regulated prescription drug products and determined that such application is not necessary for the enforcement of the CSA at this time. Further, DEA has determined that distribution records required to be maintained pursuant to the FDA guidelines set forth in title 21, Code of Federal Regulations (21 CFR), Part 205 are adequate for satisfying DEA's recordkeeping requirements for distributions. This determination is based on DEA's finding that there is presently a lack of evidence that prescription drug products that contain List I chemicals are being diverted for the illicit manufacture of controlled substances, the products are already subject to an extensive system of regulatory controls, and the DEA access to the distribution records kept under the FDA guidelines should provide sufficient information to satisfy the intent of the regulations.

With respect to diversion, it has been DEA's experience that persons seeking to divert List I chemicals for the illicit manufacture of controlled substances have relied primarily on either non-regulated sources or smuggled chemicals. Initially, bulk ephedrine was the chemical of choice; following implementation of DEA's chemical control program in 1989, over-the-counter (OTC) ephedrine drug products which were exempt from the regulatory provisions of the CSA became the products of choice. With implementation of the DCDCA and regulation of the OTC ephedrine drug products, OTC pseudoephedrine drug products became a significant source for diversion. DEA is unaware of the diversion of prescription drug products containing List I chemicals to clandestine drug laboratories.

With respect to controls, prescription drugs are already subject to stringent requirements governing their distribution and dispensing. A prescription drug can only be dispensed to the public pursuant to the order of a licensed health care professional. Further, distributors of prescription drug products are subject to extensive licensing, security, recordkeeping and inventory requirements. These requirements, the guidelines for which are set forth in 21 CFR, Part 205, establish a ''closed system'' for the distribution of prescription products.

In light of the existing controls and the lack of evidence of diversion of regulated prescription products, application of the registration requirement is unnecessary at this time for the enforcement of the CSA. In addition, the information maintained in the distribution records required under the FDA guidelines is sufficient to satisfy DEA's needs, should an inspection of the records be necessary. Therefore, DEA is proposing to amend 21 CFR Part 1309 to add a new Section 1309.28, waiving the requirement of registration for any person who distributes a regulated prescription drug product. Further, DEA is proposing to amend Section 1310.06 of the regulations, which currently allows that prescription and hospital records maintained in the course of medical practice are adequate for satisfying DEA's requirements, to also allow that records required to be maintained pursuant to the guidelines set forth in 21 CFR, Part 205 shall be adequate for wholesale distributions of regulated prescription drug products. If, however, evidence of diversion of prescription products is seen in the future, DEA will take action to make the products subject to the specific regulatory requirements of the CSA.

In addition to the proposed changes described above, Sections 1309.21 and 1309.22 are proposed to be amended to make reference to the addition of the new waiver of the registration requirement.

Under the CSA, the Attorney General may waive the requirement of registration for certain manufacturers, distributors or dispensers if it is consistent with the public interest (21 U.S.C. 822(d). The Attorney General has delegated authority under the CSA and all subsequent amendments to the CSA to the Administrator of the DEA (28 CFR 0.100). The Administrator, in turn, has delegated this authority to the Deputy Administrator pursuant to 28 CFR 0.104 (59 FR 23637 (May 6, 1994)).

The Deputy Administrator of the Drug Enforcement Administration hereby certifies that this proposed rulemaking will not have a significant impact on a large number of entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This rulemaking proposes to grant those persons who distribute regulated prescription drug products relief from DEA's chemical registration requirement and allow for the use of records already maintained pursuant to FDA guidelines in lieu of requiring that separate records be maintained. These proposed amendments could potentially ease the regulatory burden for 1,200 or more distributors and manufacturers of regulated prescription drug products.

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866. DEA has determined that this is not a significant regulatory action under the provisions of Executive Order 12866, section 3(f) and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule will eliminate unnecessary regulatory requirements for distributors of regulated prescription drug products.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, List I and List II chemicals, Security measures.

21 CFR Part 1310

Drug traffic control, List I and List II chemicals, Reporting and recordkeeping requirements.

For reasons set out above, it is proposed that 21 CFR part 1309 be amended as follows:

PART 1309—[AMENDED]

1. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

2. Section 1309.21 is proposed to be revised to read as follows:

§ 1309.21 Persons required to register.

(a) Every person who distributes, imports, or exports any List I chemical, other than those List I chemicals contained in a product exempted under § 1310.01(f)(1)(iv), or who proposes to engage in the distribution, importation, or exportation of any List I chemical, shall obtain annually a registration specific to the List I chemicals to be handled, unless exempted by law or pursuant to §§ 1301.24 through 1309.28. Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation distributing List I chemicals is not required to obtain a registration.)

(b) Every person who distributes or exports a List I chemical they have manufactured, other than a List I chemical contained in a product exempted under § 1310.01(f)(1)(iv), or proposes to distribute or export a List I chemical they have manufactured, shall obtain annually a registration specific to the List I chemicals to be handled, unless exempted by law or pursuant to §§ 1309.24 through 1309.28.

3. Section 1309.22 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1309.22 Separate registration for independent activities.

(a) * * *

(b) Every person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities, unless otherwise exempted by the Act or §§ 1309.24 through 1309.28, except that a person registered to import any List I chemical shall be authorized to distribute that List I chemical after importation, but no other chemical that the person is not registered to import.

4. Section 1309.28 is proposed to be added to read as follows:

§ 1309.28 Exemption of distributors of regulated prescription drug products.

(a) The requirement of registration is waived for any person who distributes a prescription drug product containing a List I chemical that is regulated pursuant to § 1310.01(f)(1)(iv).

(b) If any person exempted by this section also engages in the distribution, importation or exportation of a List I chemical, other than as described in paragraph (a), the person shall obtain a registration for such activities, as required by § 1309.21 of this part.

(c) The Administrator may, upon finding that continuation of the waiver granted in paragraph (a) of this section would not be in the public interest, suspend or revoke a person's waiver pursuant to the procedures set forth in §§ 1309.43 through 1309.46 and 1309.51 through 1309.57 of this part.

PART 1310—[AMENDED]

5. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

6. Section 1310.06 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1310.06 Content of records and reports.

* * * * *

(b) For purposes of this section, normal business records shall be considered adequate if they contain the information listed in paragraph (a) of this section and are readily retrievable from other business records of the regulated person. For prescription drug products, prescription and hospital records kept in the normal course of medical treatment shall be considered adequate for satisfying the requirements of paragraph (a) with respect to dispensing to patients, and records required to be maintained pursuant to the Federal Food and Drug Administration guidelines relating to the distribution of prescription drugs, as set forth in 21 CFR part 205, shall be considered adequate for satisfying the requirements of paragraph (a) with respect to distributions.

* * * * *

Dated: September 11, 1995.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

FR Doc. 95–23774 Filed 9–25–95; 8:45 am]

BILLING CODE 4410–09–M

21 CFR Part 1310

[DEA–135P/RIN 1117–AA30]

Manufacturer Reporting

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to implement provisions of the Domestic Chemical Diversion Control Act of 1993 (Public Law 103–200) (DCDCA) to specify certain reporting requirements for manufacturers of listed chemicals. In a proposed rule published in the Federal Register on October 13, 1994 (59 FR 51887), the DEA previously proposed regulations to implement the requirement that bulk manufacturers of listed chemicals report certain data to the DEA. After receiving comments from the affected chemical industry, on December 9, 1994 (59 FR 63738) the DEA withdrew the portions of the proposed rule pertaining to manufacturer reporting requirements, for further study and consultation with industry. The proposed manufacturer reporting requirements as specified in this Notice of Proposed Rulemaking have been prepared with additional input from the affected chemical industry.

DATES: Written comments and objections must be received by November 27, 1995.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: The Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200) (DCDCA) was signed into law on December 17, 1993 and became effective on April 16, 1994. A final rule implementing most of the provisions of the DCDCA (60 FR 32447) was published on June 22, 1995.

The DCDCA amended 21 U.S.C. 830(b) to require that regulated persons who manufacture a listed chemical (other than a drug product that is exempted under 21 U.S.C. 802(39)(A)(iv) report annually to DEA information detailing the specific quantities manufactured. The purpose of this provision is to provide DEA with information on the amounts of listed chemicals available in the U.S. and to enable the DEA to provide the International Narcotics Control Board (INCB) with aggregate data regarding the production and availability of chemicals controlled under provisions of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

In a proposed rule published in the Federal Register on October 13, 1994 (59 FR 51887), the DEA proposed regulations to implement the provisions of the DCDCA. That notice proposed to amend Section 1310.03 to require that bulk manufacturers of listed chemicals report certain data to the DEA. In addition, Sections 1310.05 and 1310.06 were proposed to be amended to set forth the specific requirements for the chemical manufacturer reports. Comments received from the affected industry expressed concerns that the proposed manufacturer reports as set forth in Sections 1310.05 and 1310.06 may duplicate existing reports made by chemical manufacturers, did not take into consideration the treatment of confidential business information and were unduly burdensome. Therefore, on December 9, 1994, the DEA published a notice in the Federal Register (59 FR 63738) to withdraw the proposed provisions for manufacturer reporting (as set forth in 1310.05 and 1310.06) for reassessment and consultation with industry. Subsequent to the withdrawal, the DEA has solicited further input and advice from representatives of the affected chemical industry. Following

further discussions and consultation with the Chemical Manufacturers Association (CMA) and other relevant industry groups, the DEA has prepared the proposed regulations for manufacturer reporting.

These reporting requirements will apply only to bulk manufacturers of listed chemicals. The term bulk manufacturer as used in this regulation means a person who manufactures a listed chemical by means of chemical synthesis or by extraction from other substances. It does not include persons whose sole activity consists of repackaging or relabeling listed chemical products or the manufacture of drug dosage form products which contain a listed chemical.

Industry groups expressed concerns regarding the burden of generating special reports to satisfy this new reporting requirement. In order to minimize such a burden and avoid duplicate reporting, the DEA will accept existing reports which contain the required data, provided the data is separate or readily retrievable from other data in the report. Thus, if an existing standard industry report contains the information required in Section 1310.06(h), the preparation of a separate report will not be necessary.

Industry groups also expressed concerns that the DEA would require each manufacturer to perform ''mass balance'' accountabilities for each listed chemical. In addition, industry representatives also raised concerns regarding such accountabilities as they pertain to the production of chemical mixtures. However, the DEA wishes to emphasize that the purpose of this reporting requirement is to allow the DEA to monitor the overall availability of each listed chemical in the U.S. and report aggregate information to the INCB, when requested. For each listed chemical, each manufacturer is required to report annually to DEA (1) the year-end inventory, (2) the aggregate quantity manufactured, (3) the aggregate quantity used for internal consumption and (4) the aggregate quantity converted to a product exempted under Section 1310.01(f)(1)(iv) or 1310.01(f)(1)(v) during the preceding calendar year. While manufacturers are required to report the quantities of listed chemicals used in the production of exempted products (e.g. exempted drug products and chemical mixtures), the manufacturer is not required to report data regarding the aggregate quantity of the exempted products produced.

For purposes of these reporting requirements, internal consumption shall be defined as any quantity of a listed chemical otherwise not available for further resale or distribution to any outside party. Internal consumption shall include (but not be limited to) quantities used for quality control testing, quantities consumed in-house or production losses. Internal consumption does not include the quantities of a listed chemical consumed in the production of exempted products. (These quantities used in the production of exempted products shall be reported separately.)

Industry groups also expressed concern regarding the protection of data provided to the DEA if it is designated as confidential business information. The DEA has considerable experience in safeguarding similar confidential business information. The issue of protection of confidential business information has been addressed by the DEA in the Federal Register Notice published on June 22, 1995 which finalizes specific provisions of the DCDCA (60 FR 32453).

The release of confidential business information that is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4) (FOIA), is governed by section 830(c) of the CSA (21 U.S.C. 830(c)) and the Department of Justice procedures set forth in 28 CFR 16.7.

Section 830(c) of the CSA provides that information collected under section 830 that is protected from disclosure under Exemption 4 may only be released in circumstances related to the enforcement of controlled substance or chemical laws, customs laws, or for compliance with U.S. obligations under treaty or international agreements. The Department of Justice procedures establish that if a FOIA request is received for release of information that is protected under Exemption 4, the submitter of the protected information must be notified of such a request, given an opportunity to object to the disclosure and allowed to provide justification as to why the information should not be disclosed.

In addition to the statutory and regulatory requirements, DEA has established internal guidelines governing the handling of confidential business information, including provisions that the material be maintained in locked containers, that access to the information be on a need-to-know basis, and that any disclosure under section 830 be made only pursuant to a non-disclosure agreement by the receiving party.

As proposed, data provided under these reporting requirements shall be submitted annually to the Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington DC 20537, on or before the 15th day of March of the year immediately following the calendar year for which submitted.Therefore, the first annual reports which detail manufacturing data for calendar year 1995, shall be submitted on or before March 15, 1996.

The Attorney General has delegated authority under the CSA and all subsequent amendments to the CSA to the Administrator of the DEA (28 CFR 0.100). The Administrator, in turn, has redelegated this authority to the Deputy Administrator pursuant to 28 CFR 0.104. The Deputy Administrator hereby certifies that this proposed rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The DEA estimates that only approximately 210 manufacturers of listed chemicals will be impacted by these reporting requirements. The impact is minimal since the requested information is frequently maintained in the normal course of business operation. In an effort to further minimize the impact of these reporting requirements and avoid duplicate reporting, the DEA will accept existing reports which contain the required the required data, the DEA will accept existing reports which contain the required data, provided the data is separate or readily retrievable from other data in the report.

The proposed rule is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements, List I and List II chemicals.

For reasons as set out above, 21 CFR part 1310 is proposed to be amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.03 is proposed to be amended by redesignating the introductory text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 1310.03 Persons required to keep records and file reports.

(a) * * *

(b) Each regulated person who manufacturers a listed chemical shall file reports regarding such manufactures as specified in § 1310.05.

3. Section 1310.05 is proposed to be amended by adding a new paragraph (d) to read as follows:

§ 1310.05 Reports.

* * * * *

(d) Each regulated bulk manufacturer of a listed chemical shall submit manufacturing, inventory and use data on an annual basis as set forth in § 1310.06(h). This data shall be submitted annually to the Drug and Chemical Evaluation Section, Drug Enforcement Administration (DEA), Washington, DC 20537, on or before the 15th day of March of the year immediately following the calendar year for which submitted. This reporting requirement does not apply to drug or other products which are exempted under § 1310.01(f)(1)(iv) or § 1310.01(f)(1)(v) except as set forth in § 1310.06(h)(5). If an existing standard industry report contains the information required in § 1310.06(h) and such information is separate or readily retrievable from the report, that report may be submitted in satisfaction of this requirement. Each report shall be submitted to the DEA under company letterhead and signed by an appropriate, responsible official. For purposes of this paragraph only, the term regulated bulk manufacturer of a listed chemical means a person who manufactures a listed chemical by means of chemical synthesis or by extraction from other substances. The term bulk manufacturer does not include persons whose sole activity consists of the repackaging or relabeling of listed chemical products or the manufacture of drug dosage form products which contain a listed chemical.

4. Section 1310.06 is proposed to be amended by adding a new paragraph (h) to read as follows:

§ 1310.06 Content of records and reports.

* * * * *

(h) Each annual report required by § 1310.05(d) shall provide the following information for each listed chemical manufactured:

(1) The name, address and chemical registration number (if any) of the manufacturer and person to contact for information.

(2) The aggregate quantity of each listed chemical that the company manufactured during the preceding calendar year.

(3) The year-end inventory of each listed chemical as of the close of business on the 31st day of December of each year. (For each listed chemical, if the prior period's ending inventory has not previously been reported to DEA, this report should also detail the beginning inventory for the period.)

(4) The aggregate quantity of each listed chemical used for internal consumption during the preceding calendar year.

(5) The aggregate quantity of each listed chemical manufactured and converted to a product exempted under § 1310.01(f)(1)(iv) or § 1310.01(f)(1)(v) during the preceding calendar year.

(6) Data shall identify the specific isomer, salt or ester when applicable but quantitative data shall be reported as anhydrous base or acid to the nearest kilogram.

Dated: September 11, 1995.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 95–23775 Filed 9–25–95; 8:45 am]

BILLING CODE 4410–09–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2615

RIN 1212–AA77

Reportable Events

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of meeting.

SUMMARY: This notice announces the first meeting of the Reportable Events Negotiated Rulemaking Advisory Committee.

DATES: The first meeting of the committee will be held at 10 a.m. on Wednesday, October 11, 1995.

ADDRESSES: The first meeting will be held at PBGC's offices at 1200 K Street, N.W., Washington, D.C. 20005–4026.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, PBGC, 1200 K Street, N.W., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the PBGC published a notice of intent to establish a negotiated rulemaking advisory committee to develop proposed amendments to the PBGC's regulations governing reportable events (60 FR 41033).

The PBGC expects to receive approval of the committee's establishment from the Office of Management and Budget shortly. Upon receipt of approval, the PBGC will publish a notice of the establishment of the committee. The PBGC is publishing this notice before the official establishment of the committee to give 15 days' notice of the meeting.

First Committee Meeting

The first meeting of the committee will be held at 10:00 a.m. on Wednesday, October 11, 1995, at the PBGC's offices and will be open to the public. The purpose of the first meeting will be to establish procedures for the conduct of committee activity. The procedures will be consistent with the requirements of the Federal Advisory Committee Act and the Negotiated Rulemaking Act.

Issued in Washington, D.C., this 21st day of September, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–23912 Filed 9–25–95; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 183

[CGD 95–041]

Propeller Accidents Involving Houseboats and Other Displacement Type Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability of report.

SUMMARY: In a notice published in the Federal Register on May 11, 1995 (60 FR 25191), the Coast Guard solicited comments from all segments of the marine community and other interested persons on various aspects of propeller accident avoidance. In a second notice published August 9, 1995 (60 FR 40545), the Coast Guard reopened and extended the comment period until November 7, 1995. This notice announces the availability of a report published by the Propeller Guard Subcommittee of the National Boating Safety Advisory Council (NBSAC) dated November 7, 1989.

Background Information

By law the Coast Guard is required to consult with NBSAC regarding regulations or other major recreational

boating safety matters. NBSAC consists of 21 members—seven who are State boating officials, seven from the boating industry, and seven representing national boating organizations and/or the general public.

This notice advises readers that the 1989 NBSAC Propeller Guard Subcommittee Report has been placed in the docket and is available for public inspection.

ADDRESSES: Requests for copies of the 1989 NBSAC Propeller Guard Subcommittee Report may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406)(CGD95–041), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Auxiliary, Boating, and Consumer Affairs Division, (202) 267–0981.

Dated: September 18, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–23802 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AA65

Disposition of Federal Records

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule.

SUMMARY: NARA proposes to amend its regulations to require reimbursement for all records maintained in Federal records centers that have exceeded the authorized disposal date. In connection with this requirement, NARA will stipulate that agencies should not request a change in the retention period specified in a records schedule for records that must be kept beyond their normal retention period for audit, investigation, litigation, or any other administrative purpose. NARA is taking this action because the Federal records centers have a serious shortage of storage space and can no longer absorb the cost of storing records beyond their scheduled disposal date.

DATES: Comments must be received by November 27, 1995.

ADDRESSES: Comments should be sent to Director, Policy and Planning Division (PIRM-POL), National Archives and Records Administration 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at 301–713–6730.

SUPPLEMENTARY INFORMATION:

Background

The Federal Records Act (FRA) confers broad authority on NARA to formulate and implement records management policy for the Federal government. This includes establishing Federal records centers (44 U.S.C. 2907), providing guidance and promulgating standards to ensure adequate documentation of the policies and transactions of the Federal government, ensuring proper records disposition (44 U.S.C. 2904), and implementing procedures for the disposition, disposal, and reproduction of records (44 U.S.C. 3302).

The Federal Records Act does not specifically instruct NARA regarding what records it must store at Federal Records Centers (FRCs) or the length of time for which it must store them. *See* 44 U.S.C. 2907. For that reason, NARA may determine the scope of service provided at FRCs, so long as NARA acts in a manner that it determines will best serve the public, effectuate sound records management, and implement the policy goals contained in the FRA. See B–211953, slip op. at 5 (Dec. 7, 1984) (Comp. Gen.).

In the Comptroller General decision just cited, the General Accounting Office (GAO) held that the General Services Administration (GSA), then NARA's parent agency, could be reimbursed under the Economy Act for storing and serving current records at FRCs because the function fell outside the range of services that GSA had determined it was required to provide under the FRA and because GSA did not receive appropriations for the service.

The GAO decision recognized that NARA possesses the authority to ''promulgate reasonable standards and guidelines for determining when records may be transferred from agency office space to Federal records centers (FRCs), so long as these guidelines are consistent with the statutory goals of promoting economy and efficiency in records management.'' B–211953, slip op. at 5. Further, GAO noted that it is NARA ''which must determine the basis on which it will allocate limited space and resources among client agencies.

NARA historically has interpreted its authority to operate FRCs as permitting the storage and servicing of temporary records that are retained beyond their scheduled disposition dates for administrative, fiscal, legal, or other reasons, although it never sought appropriations for that purpose. Now, NARA has determined, based on the need to reallocate limited space and resources, that sound records management practice requires that it no longer interpret its responsibilities to include these functions. Therefore, unless Congress specifically appropriates money in the future for the storage and service of temporary records retained beyond their scheduled disposition dates for administrative, fiscal, legal, or other reasons, NARA will, under the Economy Act, provide such service on a reimbursable basis only, so long as doing so does not interfere with the agency's remaining responsibilities to operate FRCs.

Problem

Since the establishment of the records center system in 1950, there has been a continuous growth in records holdings. Records center holdings, in fact, have increased from 45,000 cubic feet in 1950 to 18,860,981 cubic feet as of April 1995. We expect the growth to accelerate with the closure of military bases and installations as a result of the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510) and general Government-wide downsizing.

Currently, there are 13 Federal records centers and two National records centers. The availability of open space, however, continues to pose a critical challenge. Even with the addition of the Pittsfield FRC, the records center system reached 95 percent of its capacity by the end of FY 1994. It is only through the ongoing major redistribution of records to the Pittsfield FRC and the new FRC in Philadelphia that the records center system has been able to cope with records storage demands.

The presence in records centers of temporary records that have exceeded their scheduled disposition dates has significantly contributed to the reduced storage capacity to meet records storage demands. Indeed, records centers holdings of these retained records have increased by over one million cubic feet in the past five years. In May 1990, the volume of these records was over two million cubic feet, about 12.5 percent of the total holdings for records centers. About 3.2 percent (531,374 cubic feet) of those records were otherwise eligible for disposal, but had to be retained. As of April 1995, records center holdings of these records had increased to 3,247,506 cubic feet and approximately 38.8

percent (1,259,416 cubic feet) had exceeded their authorized disposal date.

With the continuing growth of these records, and the acceptance of new temporary records, including those from military base and installation closures and other downsizing Government agencies, the records center system can no longer absorb the cost of storing and servicing records that have exceeded their authorized disposal date. Moreover, agencies have no incentive under the present system to avoid either retaining these records indefinitely or retaining a broader category or greater number of records than is strictly necessary.

Proposed NARA Action

To alleviate this problem and to enable NARA to continue to offer quality storage and service for temporary records that have not yet reached their disposal date, NARA proposes to amend 36 CFR 1228.54(g) to require reimbursement for records maintained in Federal records centers that have exceeded their authorized disposal date. NARA also proposes to amend 36 CFR 1228.32, which provides procedures for changing retention periods of series of records, to state that agencies should not request to change the scheduled retention period for records needed beyond their normal retention periods for temporary administrative purposes.

Agencies who do not wish to negotiate an agreement for reimbursement will be required to arrange and pay for the return of the records to the agency. Upon publication of this proposed rule, NARA will notify all agencies that currently have temporary records otherwise eligible for immediate disposal in Federal records center space.

We intend that the fee for the storage and service of temporary records retained beyond their scheduled disposal date will become effective on January 1, 1996. For the period from January 1 through September 30, 1996, the fee will be approximately $1.60 per cubic foot. The fee may be adjusted in subsequent fiscal years based on increases in rent and other overhead costs.

This rule is a significant regulatory action under E.O. 12866 of September 30, 1993 and has been reviewed by OMB. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1228

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend 36 CFR part 1228 as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. chapters 21, 29, and 31.

2. Section 1228.32 is revised to read as follows:

§ 1228.32 Request to change disposition authority.

(a) Agencies desiring to change the approved retention period of a series or system of records shall submit an SF 115. Disposition authorities contained in approved SFs 115 are automatically superseded by approval of a later SF 115 applicable to the same records unless the later SF 115 specified an effective date. Agencies submitting revised schedules shall indicate on the SF 115 the relevant schedule and item numbers to be superseded, the citation to the current printed records disposition schedule, if any, and/or the General Records Schedules and item numbers that cover the records.

(b) Agencies proposing to change the retention period of a series or system of records shall submit with the SF 115 an explanation and justification for the change. The need to retain records longer than the retention period specified in the disposition instructions on an approved SF 115 for purposes of audit, investigation, litigation, or any other administrative purpose that justifies the temporary extension of the retention period shall be governed by the procedures set forth in § 1228.54. Agencies shall not submit an SF 115 to change the retention period in such cases.

3. Section 1228.54(g) is revised to read as follows:

§ 1228.54 Temporary extension of retention periods.

* * * * *

(g) Except when NARA agrees to continue to store and service records on a reimbursable basis, agencies shall remove from Federal records centers at the agency's expense records that, because of court order, investigation, audit, study, or any other administrative reason the agency wishes to retain longer than the scheduled retention period for the records. The removal of records must be accomplished within 60 days of the date of the notification from the Federal records center that the retention period has expired. Agencies that wish to establish an agreement or inquire about their records should write to NARA, Office of Federal Records Centers (NC), 8601 Adelphi Road, College Park, MD 20740–6001.

Dated: September 5, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–23818 Filed 9–25–95; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[GA–95–01–FRL–5303–4]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by the Georgia Department of Natural Resources, Environmental Protection Division (EPD) for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by October 26, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Air Programs Branch, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Yolanda Adams, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 347–3555, Ext. 4149.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. If the state's submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional material. EPA received EPD's title V operating permit program submittal on November 12, 1993. The State provided EPA with additional material in supplemental submittals dated June 24, 1994, November 14, 1994, and June 5, 1995. Because these supplements materially changed the State's title V program submittal, EPA has extended the review period and will work expeditiously to promulgate a final decision on the State's program.

The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval from a period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State of Georgia would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a federal permits program for Georgia. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim approval, if Georgia failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the State of EPA then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act,which would remain in effect until EPA determined that EPA had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the State of Georgia, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that Georgia had come into compliance. In any case, if, six months after EPA applied the first sanction, the State of Georgia had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

If, following final interim approval, EPA were to disapprove Georgia's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Georgia had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State of Georgia, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that Georgia had come into compliance. In all cases, if, six months after EPA applied the first sanction, the State of Georgia had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if Georgia has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to Georgia's program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of Georgia upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

EPA has concluded that the operating permit program submitted by Georgia substantially meets the requirements of title V and part 70, and proposes to grant interim approval to the program. For detailed information on the analysis of the State's submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

1. Support Materials

Pursuant to section 502(d) of the Clean Air Act as amended (1990 Amendments, the Governor of each state must develop and submit to the Administrator an operating permits program under State or local law or under an interstate compact meeting the requirements of title V of the Act. Georgia submitted, under the signature of Governor Zell Miller, the operating permits program, prepared by the EPD, to be implemented in all areas of the State of Georgia.

The EPD submittal, provided as Section 1—''Program Description'', addresses 40 CFR 70.4(b)(1) by describing how the EPD intends to carry out its responsibilities under the part 70 regulations. This program description has been deemed to be appropriate for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the attorney general (or the attorney for the State air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The State of Georgia submitted a legal opinion from Michael J. Bowers, Attorney General of the State of Georgia, demonstrating adequate legal authority to carry out the issuance of permits to all sources subject to the requirements of the part 70 regulations, and to promulgate regulations in compliance with applicable State and Federal laws. This opinion including a supplement to the opinion adequately addresses the thirteen provisions listed at 40 CFR 70.4(b)(3)(i)–(xiii).

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms and relevant guidance to assist in the implementation of the permit program. Section 4 of the EPD submittal includes the permit application form with instructions, and a permitting procedures manual as guidance to assist in the implementation of the permit program. In addition, an updated permit application was included in the November 14, 1994, supplemental submittal. It has been determined that the application forms and permitting procedures manual substantially meet the requirements of 40 CFR 70.5(c).

2. Regulations and Program Implementation

The State of Georgia has submitted Rule 391–3–1–.03(10), ''Title V Operating Permits,'' and Rule 391–3–1–.03(9), ''Permit Fees,'' for implementing the State part 70 programs as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was included in Section 2 of the submittal. Copies of all applicable State statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program.

The Georgia operating permits regulations closely follow the Federal part 70 regulations. Georgia's program meets the following requirements set out in the part 70 program. These requirements are addressed in Georgia's Rule 391–3–1–.03(10) as follows: (A) Applicability requirements (40 CFR 70.3(a)), Rule 391–3–1–.03(10)(b); (B) Permit applications (40 CFR 70.5), Rule 391–3–1–.03(10)(c); (C) Provisions for permit content (40 CFR 70.6), Rule 391–3–1–.03(10)(d); (D) Provisions for permit issuance, renewals, reopenings and revisions, including public participation (40 CFR 70.7), Rule 391–3–1–.03(10)(e); and (E) Permit review by EPA and affected States (40 CFR 70.8), Rule 391–3–1–.03(10)(f). The Georgia Air Quality Act, Official Code of Georgia Annotated (OCGA) sections 12–9–12, 12–9–13, 12–9–14, 12–9–23, and 12–9–24, satisfy the requirements of 40 CFR 70.11, for enforcement authority.

The Georgia program in Rule 391–3–1–.03(10) substantially meets the requirements of 40 CFR 70.4(b)(12) with regard to operational flexibility. Any state that seeks to administer a program under part 70 is required by § 70.4(b) to submit a plan which contains provisions to allow for changes within a permitted facility without requiring a permit revision provided that the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes, which shall be a minimum of 7 days. Section 70.4(b)(12)(iii)(A) states that the written notification shall state when the changes will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit. In addition, § 70.4(b)(12)(iii)(B) states that the permit shield may extend to terms and conditions that allow such increases and decreases in emissions. Georgia Rule 391–3–1–(10)(d)1.(ii) allows for a permit to include terms and conditions allowing for trading of emissions changes in the permitted facility solely for the purpose of complying with a Federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements; however, it does not provide for the notification requirements and permit shield extension found in § 70.4(b)(12)(iii). Therefore, as a condition of full approval, this rule must be revised to provide for the notification requirements and the permit shield extension in part 70.

Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purposes of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state must request and EPA may approve as part of that state's program any activity or emission level that the state wishes to consider insignificant.

The EPD provided its current permit exemption list found in Rule 391–3–1–.03(6) as its list of insignificant activities. Rule 391–3–1–.03(6) states that these exemptions may not be used to lower the potential to emit below ''major source'' thresholds or to avoid any ''applicable requirement''. This provision ensures that listed facilities, units, or activities do not interfere with the determination of applicable requirements or the determination of whether or not a source is major under the Act. In addition, Georgia Rule 391–3–1–.03(10)(c)2. incorporates 40 CFR 70.5(c) by reference, thereby ensuring that an application for a part 70 permit does not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. However, Georgia's rule exempts source activities from permitting, rather than from the obligation of including the activity in the permit application.

Georgia's exemption rule does not make a distinction among activities which can be omitted from permit applications and those which are still considered insignificant but which must be listed in the permit application. In addition, the EPD rule exempts facilities from listing pollutants in the permit application, rather than exempting the activity itself. The approaches mentioned above found in Georgia's exemptions rule are not consistent with the insignificant activities approach in part 70; therefore, EPA cannot propose full approval of Georgia's exemptions list as the basis for determining insignificant activities.

Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given that this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Although Georgia Rule 391–3–1–.03(10)(d)1.(1) adopts part 70.6(a) by reference, it does not define prompt within the regulation. Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not require sufficiently prompt reporting of deviations.

Rule 391–3–1–.05, allows the EPD discretion to grant relief from compliance with State rules and regulations under certain conditions. The EPA regards Rule 391–3–1–.05 as wholly external to the program submitted for approval under part 70, and consequently proposes to take no

action on these provisions of State and local law in this rulemaking. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. In other words, a variance does not affect the title V source until the title V permit is modified pursuant to the procedures in part 70. EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

The complete Georgia operating permits program submittal and the TSD are available for review for more detailed information. The TSD contains the detailed analysis of Georgia's program and describes the manner in which the State's program meets all of the operating permit program requirements of 40 CFR part 70.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of the fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (Consumer Price Index (CPI) adjusted from 1989). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum.''

The EPD elected to adopt the ''presumptive minimum'' of $25/ton (annually adjusted by the CPI), for each regulated pollutant whose emissions are above the threshold for that pollutant, except carbon monoxide. EPD's title V fee will be assessed on the first 4,000 tons per regulated pollutant per facility. In addition, Georgia has demonstrated that the fees collected will be sufficient to administer the program.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation

Georgia has demonstrated in its title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements. This legal authority is contained in Georgia's enabling legislation and in regulatory provisions defining ''applicable requirements'' and stating that the permit must incorporate all applicable requirements. Georgia has further supplemented its broad legal authority with a commitment to ''take action, following promulgation by EPA of regulations implementing section 112 of title III of the Clean Air Act to either incorporate such new or revised provisions by reference into State rules or submit State-drafted rules, for EPA approval, to implement these provisions.'' EPA has determined that this commitment, in conjunction with Georgia's broad statutory and regulatory authority, adequately assures compliance with all section 112 requirements. EPA regards this commitment as an acknowledgement by Georgia of its obligation to obtain further regulatory authority as needed to issue permits that assure compliance with section 112 applicable requirements. This commitment does not substitute for compliance with part 70 requirements that must be met at the time of program approval.

EPA is interpreting the above legal authority and commitment to mean that Georgia is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this proposed interim approval.

b. Implementation of Section 112(g) Upon Program Approval

EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Georgia must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

EPA is aware that Georgia lacks a program designed specifically to implement section 112(g). However, Georgia does have a preconstruction review program that can serve as an adequate implementation vehicle during the transition period because it would allow the State to select control measures that would meet the maximum achievable control technology (MACT), as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

For this reason, EPA proposes to approve the use of Georgia's preconstruction review program found in Rule 391–3–1–.03, under the authority of title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of a State rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state air programs to implement section 112(g), title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purpose of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the State to adopt regulations consistent with the Federal requirements.

c. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities,

adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of future section 112 standards and programs that are unchanged from the Federal rules as promulgated, and to delegate existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[1] Georgia has informed EPA that it intends to accept delegation of section 112 standards through adoption by reference. This program for delegation applies to both existing and future standards, and to both part 70 and non-part 70 sources. The details of the State's delegation mechanism is set forth in a letter dated June 5, 1995, submitted by Georgia as a title V program addendum.

d. Commitment To Implement Title IV of the Act

The State of Georgia developed acid rain permit rules in Rule 391–3–1–.13, which was submitted as part of the operating permits program. The State also submitted standard acid rain permit application forms which will be revised as updated forms are provided by the EPA. These rules and permit application forms meet the requirements of the acid rain program.

B. Proposed Actions

The EPA is proposing to grant interim approval to the operating permits program submitted by Georgia on November 12, 1993, and as supplemented on June 24, 1994, November 14, 1994, and June 5, 1995. If this approval is promulgated, the State must make the following changes to receive full approval: (1) revise Rule 391–3–1–(10)(d)1.(ii) to provide for the notification requirements and permit shield extension found in § 70.4(b)(12)(iii); and (2) correct all deficiencies in its insignificant activities regulation.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

As discussed previously in section II.A.4.b., EPA proposes to approve Georgia's preconstruction review program found in Rule 391–3–1–.03, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of a State rule implementing EPA's section 112(g) regulations.

In addition, as discussed in section II.A.4.c., EPA proposes to grant approval under section 112(l)(5) and 40 CFR 63.91 to the State's program for receiving delegation of future section 112 standards and programs that are unchanged from Federal rules as promulgated. Additionally, EPA is proposing to delegate existing standards and programs under 40 CFR parts 61 and 63. This program for delegation applies to both part 70 and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in docket number GA–95–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by October 26, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 15, 1995.

John H. Hankinson, Jr.,

Regional Administrator.

[FR Doc. 95–23839 Filed 9–25–95; 8:45 am]

BILLING CODE 6560–50–M

[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

40 CFR Parts 264, 265, 270, and 271

[FRL–5303–3]

Corrective Action for Solid Waste Management Units (SWMUs) at Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of Response to Comments.

SUMMARY: On June 2, 1994, the Environmental Protection Agency (EPA) published a Notice of Data Availability (NODA) and request for comment in the Federal Register, which announced the availability of a revised draft Regulatory Impact Analysis (RIA) prepared by the Agency for the proposed Resource Conservation and Recovery Act (RCRA) requirements for corrective action for solid waste management units at hazardous waste management facilities. The information included data in support of the proposed Subpart S rule relating to corrective action, published on July 27, 1990, and the final rule for Corrective Action Management Units (CAMUs) and Temporary Units (TUs), promulgated on February 16, 1993. This notice constitutes a response to comments received on that NODA.

ADDRESSES: Copies of the comments may be obtained by calling or visiting the RCRA Information Center. The RCRA Information Center is located in Room M2616 at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Requests for obtaining the document by telephone may be made by calling (202) 260–9327. Copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone (800) 424–9346; in the Washington, DC metropolitan area the number is (703) 412–9810, TDD (703) 412–3323.

SUPPLEMENTARY INFORMATION:

I. July 27, 1990 Proposal

On July 27, 1990 EPA proposed a comprehensive rule (Subpart S, 55 FR 30798) specifying corrective action requirements for facilities regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments (HWSA) of 1984. The proposed rule was developed to provide both the technical (e.g., action levels, investigation aspects, remedy selection criteria, etc.) and procedural aspects (e.g., definitions, reporting and permitting requirements, etc.) of corrective action. A Regulatory Impact Analysis (RIA) to estimate the costs and benefits of the Subpart S proposed rule was developed to support the proposed rule. In that proposal, the EPA explained that it would continue to refine its estimates and make the results available to the public. In the June 2, 1994 Federal Register Notice of Data Availability and request for comments, EPA made available the revised draft Subpart S RIA that includes supporting data regarding studies conducted by EPA concerning the use of CAMUs in RCRA corrective actions. EPA used these supporting data in a rulemaking authorizing the establishment of CAMUs (58 FR 8658, February 16, 1993). Although the CAMU rulemaking included a supplemental notice (57 FR 48195, October 22, 1992) as well as a separate RIA and a summary report, some commenters requested additional information on the data supporting that analysis. EPA believes the summary report provided sufficient detail for purposes of the CAMU rulemaking. However, because the results of the CAMU RIA will be relevant to the regulatory options analysis in the final Subpart S RIA, as well as a related RCRA rulemaking initiative known as the Hazardous Waste Identification Rule (HWIR) for contaminated media, a more detailed breakdown of the CAMU data was included in the supporting data made available through the June 2, 1994 Federal Register notice.

EPA believes the data made available through the June 2, 1994 Federal Register notice satisfy the outstanding requests for additional information on the data supporting the CAMU rulemaking. To date, EPA has received ten (10) sets of public comments on these data. EPA has evaluated these comments and believes that none of the issues raised by the commenters indicate a need for EPA to re-visit the impact analysis done in support of the CAMU rulemaking. However, because of the potential relevance of these comments to EPA's ongoing rulemaking efforts, EPA will continue to evaluate and respond to comments within the context of the Subpart S RIA and HWIR rulemaking for contaminated media.

II. Summary of Public Comments

As of the July 18, 1994 deadline, ten (10) commenters had submitted letters with comments regarding the data made available through the June 2, 1994 Federal Register notice. A number of commenters stated that the Subpart S proposal is likely to be affected by the HWIR rulemaking for contaminated media, and recommended that the impact of the HWIR rulemaking be reflected in the Subpart S rulemaking. In addition, commenters raised a number of issues regarding the methodology and assumptions used for the draft RIA. EPA agrees that events that have occurred since the Subpart S proposal was issued, including the development of HWIR, should be taken into account in the Subpart S rulemaking. Because EPA is now considering how to proceed with the Subpart S rulemaking, the Agency is not providing a detailed response to these comments at this time. However, EPA will take these comments into account when deciding whether to finalize or repropose portions of the Subpart S proposal.

One commenter, in addition to addressing the RIA methodology as it applies to the Subpart S proposal, also addressed its applicability to the final CAMU rule. The commenter first argued that EPA's failure to conduct sensitivity analyses on the effects of parameter uncertainty undermined many of the draft RIA's conclusions. In response to this comment, EPA conducted an analysis in the Draft RIA for the Final Rulemaking on Corrective Action for Solid Waste Management Units in which OSW identified and evaluated the sources, magnitude, and consequences of uncertainty in predictions of chemical concentrations and exposures in the multimedia fate and transport modelling component of the RIA. The scope of the analysis of uncertainty focused on predictions of concentrations and exposures from unremediated sites using a Monte Carlo version of MMSOILS (a multimedia contaminant fate, transport, and exposure model) at two sample facilities (one facility and environmental setting was well characterized, the other was limited.) The two sample facilities were subjected to quantitative (sensitivity) analyses of the effects of parameter uncertainty on chemical concentration, with the Monte Carlo results used to estimate the cumulative distribution frequency of the chemical concentration in ground water, surface water, air, agricultural and food products, and biota. In addition, Monte Carlo parameter sensitivity methods were used to evaluate model sensitivity to parameter uncertainty.

Further, the commenter argued that, because no sensitivity analyses were performed on sample selection, facility characterization, contaminant releases, remedy selection, remedy effectiveness, human health and ecological benefits, averted water use costs, residential

property value changes, and cost/benefit comparisons, results may not be reliable in predicting decision-making during actual corrective actions. EPA does not believe that this type of analysis was necessary here, since the RIA did take account of potential uncertainty. In the draft RIA, EPA conducted a stratified random sampling procedure developed to maximize the precision of the population estimator in extrapolating the sample findings to the corrective action population. In addition, EPA used information collected from EPA Regional files and state regulatory agency files with regard to facility operations and history, environmental setting, SWMU characteristics, extent of existing contamination, and potential receptors to substantially increase the reliability of the draft RIAs conclusions. All of these factors reduce the need for additional uncertainty analysis. Therefore, EPA believes that the scope of the uncertainty analysis was adequate and further sensitivity analyses were not required. However, EPA will continue to assess this issue as the Agency moves forward with the Subpart S rulemaking.

The commenter also argued that the draft RIA's conclusions, which are based on the proposed Subpart S rule, do not apply to corrective actions performed under the final CAMU rule, which differs from the proposal. Another commenter also suggested that the draft RIA should be revised to reflect the promulgation of the CAMU rule. The commenters are correct that the draft RIA incorporates the proposed CAMU rather than the final version. However, as indicated above, EPA in its June 2, 1994 Federal Register notice made available a more detailed breakdown of data supporting the final CAMU RIA so that commenters would have additional information on the data supporting the final version of the CAMU rule. EPA believes that this supplemental material, along with the information provided in the CAMU RIA, provides sufficient support for the final rule. The final CAMU rule expanded the CAMU concept from the July 27, 1990 proposed rule to increase flexibility in selection of more cost-effective remedies, increase treatment of waste and contaminated media, and speed implementation of the program. According to the supplemental data and analyses, remedy selections based upon the more flexible expanded CAMU provisions, using facility-specific data on actual contamination (where available) and modelling data to estimate the extent of contamination, allow for consolidation of contaminated media prior to treatment and result in more treatment of waste that otherwise would not be treated.

The commenter also stated that the remedy selection process was flawed because the technical panels did not fairly represent real-world facilities and time frames. EPA disagrees; the process contained a number of safeguards to assure that it was representative of actual decision-making. In order to account for the complexity of the decision-making process when simulating the selection of remedies, EPA developed an approach that relied on panels of experts to select remedies at the sample facilities. In order to capture the interactions between EPA and the facility, EPA convened policy and technical expert panels. Policy panels were identified and selected by officials in EPA's Office of Solid Waste to represent the role of the regulatory agency in setting remedial objectives, assess technical information on the performance of potential remedies, and make final remedy selection decisions. The policy panels consisted of experienced Regional EPA and State regulatory staff with expertise in a variety of technical areas including geology, engineering, and risk assessment. Technical panels consisting of national remediation experts were identified through a selective search across many well-recognized firms in the U.S., representing the hydrogeology, geology, geochemistry, soil science, civil, chemical, or environmental engineering, and chemistry disciplines. The technical panels developed the technical remedies for each facility based on guidance from the policy panel, then estimated the costs of the remedies. Because sample facility scenarios were based upon actual facilities, actual owner/operators were not employed in determining remedy selections at the sample facilities in order to ensure the confidentiality of sample facility deliberations and remedy selections determined by the expert panels. However, the qualifications of the selected experts made them well-suited to take on the decision-making role of owner/operators. Time constraints imposed upon the expert panels reflected the simplified decision making process specified in the ground rules for the expert panel process as described on page 4–4 of the RIA. The CAMU provisions specified five decision factors for selecting remedies: long-term reliability and effectiveness; reduction of toxicity, mobility, or volume of wastes; short-term effectiveness; implementability; and, cost. Agency officials were present throughout the expert panel process to resolve specific questions concerning the interpretation/applicability of current Agency policy and to ensure that remedial objectives were consistent with the CAMU provisions. Accordingly, the expert panel process, though somewhat simplified compared to the actual decision-making process, involved a consideration of relevant factors by qualified experts. As such, it adequately represented real-world decisions for purposes of this rulemaking.

Based upon results of the impact analysis done in support of the CAMU rulemaking, as well as the above discussion in response to public comments, EPA believes it is not necessary to re-visit the regulatory impact analysis for the CAMU rulemaking.

Dated: August 24, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 95–23840 Filed 9–25–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[CC Docket No. 94–1; CC Docket No. 93–124; CC Docket No. 93–197; FCC 95–393]

Price Cap Performance Review for Local Exchange Carriers; Treatment of Operator Services Under Price Cap Regulation; Revisions to Price Cap Rules for AT&T

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On March 30, 1995, the Federal Communications Commission adopted a First Report and Order in CC Docket No. 94–1, revising its price cap regulations applicable to local exchange carriers (LECs). In that Order, the Commission also stated that it would consider adopting further rule revisions in the near future.

In this FNPRM, the Commission seeks comment on how the price cap rules should be adjusted as the competition faced by local exchange carriers (LECs) develops in the future. The Commission also seeks comments on whether its rules on rate structure should be modified to make it easier for LECs to introduce new services.

DATES: Comments must be submitted on or before November 20, 1995. Reply

Comments must be submitted on or before December 20, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steven Weingarten or Richard Lerner, Tariff Division, Common Carrier Bureau, (202) 418–1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking adopted September 14, 1995 and released September 20, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference room (Room 230), 1919 M St., N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, N.W., Washington, D.C. 20037.

Regulatory Flexibility Analysis

We have determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a ''small entity'' in Section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Local exchange carriers do not qualify as small entities because they have a nationwide monopoly on ubiquitous access to the subscribers in their service area. The Commission also has found all exchange carriers to be dominant in its competitive carrier proceeding. *See* 85 FCC 2d 1, 23–24 (1980). To the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant effect on a substantial number of ''small entities.''

Summary of Further Notice of Proposed Rulemaking

In this FNPRM, the Commission seeks comment on a number of possible changes to the LEC price cap plan. The proposed changes to the price cap plan fall into three basic categories: (1) clarifying and modifying the Commission's tariff filing requirements; (2) amending the price cap rules to permit greater pricing flexibility; and (3) modifying the structure of the price cap baskets and service categories.

The FNPRM seeks comment on whether the Commission's new service rules for LEC price cap services should be relaxed by reducing the notice and cost support requirements for facilitate the introduction of new services. One suggested approach would be to ease the rules applicable to certain new service filings upon a showing that those services are subject to competition; a second suggested approach would be to define a class of services that do not raise competitive concerns, and ease the regulatory requirements applicable to those services. The FNPRM also seeks comment on whether the Commission should eliminate the requirement that a LEC obtain a waiver of the access charge rules in Part 69 of the Commission's rules before introducing certain switched access services.

The FNPRM seeks comment on whether the lower service band index limit should be eliminated and whether the Commission should permit any other additional downward pricing flexibility. It also seeks comment on whether the Commission should allow alternative pricing plans (APPs) to be introduced on shorter notice than new services and without cost support, with certain limitations similar to those proposed for the AT&T price cap plan in an earlier order. The FNPRM also asks under what conditions the Commission should permit individual case basis (ICB) rates, including how long those rates should be permitted to remain in effect before requiring generally available averaged rates and what cost support requirements should apply. The FNPRM also seeks comment on whether any LECs that reduce prices pursuant to any pricing flexibilities granted in response to the FNPRM should be prohibited from raising their rates by more than one percent annually.

The FNPRM seeks comment on whether any revisions to the price cap baskets and service categories should be made and under what circumstances they should be made in the future and whether any service categories can be consolidated. It also consolidates the Price Cap Performance Review docket with another proceeding, Treatment of Operator Services Under Price Cap Regulation, CC Docket No. 93–124, Notice of Proposed Rulemaking, and seeks comment on whether operator services or call completion services should be in their own service categories or combined with another new or pre-existing service category.

The FNPRM seeks comment on whether any or all relaxed regulatory treatment or additional pricing flexibility proposed should be conditioned on a demonstration that barriers to entry have been removed, and if so, what demonstration should be required. The FNPRM seeks comment on what product and geographic markets should be used for any such assessment of competitive conditions. The FNPRM also seeks comment on what impact the proposed pricing flexibility would have on interstate toll rates.

The FNPRM seeks comment on whether LEC services should be removed from price cap regulation and made subject to streamlined regulation upon a showing of ''substantial competition,'' the same standard as applies to AT&T services, and whether the Commission should consider the same factors—deemed responsiveness, supply responsiveness, pricing history and market share—in evaluating whether that standard has been met. It also seeks comment on whether the LECs should be permitted to offer contract carriage for services that are subject to streamlined regulation, subject to the same conditions as AT&T. The FNRPM seeks comment on whether the Commission should adopt rules now that would define the conditions price cap LECs must meet to be considered nondominant, what those conditions should be and whether a LEC should be regulated as nondominant for certain services or within certain geographic markets but not for others.

The FNPRM also seeks comment on whether the sharing and X-Factors applicable to a particular LEC should be tied to the degree of competition it faces or the degree of pricing flexibility it receives. Finally, it seeks comment on whether the AT&T price cap plan should be modified to treat any changes in the access rates charged by LECs' competitors as exogenous costs.

Ordering Clauses

Accordingly, it is ordered that notice is hereby given of the rulemaking described above and that comment is sought on those issues.

It is further ordered that pursuant to applicable procedures set forth in Section 1.399 and 1.411 *et seq.* of the Commission's Rules, 47 C.F.R. 1.399, 1.411 *et seq.*, comments SHALL BE FILED with the Secretary, Federal Communications Commission, Washington D.C. 20554 no later November 20, 1995. Reply comments SHALL BE FILED no later than December 20, 1995. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties should file two copies of any such pleading with the Tariff Division, Common Carrier

Bureau, Room 518, 1919 M Street, N.W., Washington, D.C. 20554, and one copy of any pleadings should be submitted on computer disk to the Industry Analysis Division, Common Carrier Bureau, Room 534, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

List of Subjects

47 CFR Part 61

Communications common carriers, Telephone.

47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–23778 Filed 9–25–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95–151; RM–8695]

Radio Broadcasting Services; Snyder, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Mark C. Nolte, proposing the allotment of Channel 246A to Snyder, Texas, as the community's second local FM service. Channel 246A can be allotted to Snyder in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 246A at Snyder are 32–43–04 and 100–55–02.

DATES: Comments must be filed on or before November 13, 1995, and reply comments on or before November 28, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John B. Kenkel, Kenkel & Associates, 1901 L Street, Suite 200, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–151, adopted September 12, 1995, and released September 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–23771 Filed 9–25–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–150; RM–8692]

Radio Broadcasting Services; San Angelo, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Regency Broadcasting, Inc., proposing the allotment of Channel 289C3 to San Angelo, Texas, as the community's ninth local FM service. Channel 289C3 can be allotted to San Angelo in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 289C3 are 31–27–48 and 100–26–12.

DATES: Comments must be filed on or before November 13, 1995, and reply comments on or before November 28, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James L. Oyster, 108 Oyster Lane, Castleton, Virginia 22716–9720 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–150, adopted September 12, 1995, and released September 20, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–23779 Filed 9–25–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–69, Notice No. 01]

RIN No. 2127–AF80

Federal Motor Vehicle Safety Standards; New Non-Pneumatic Tires for Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to rescind Federal Motor Vehicle Safety Standard No. 129 and certain portions of Standard Nos. 110 and 120 and part 574 of Title 49 of the Code of Federal Regulations. Those provisions specify performance and labeling requirements for new non-pneumatic spare tires for passenger cars. Although those provisions were established in the anticipation of the production of non-pneumatic spare tires, none have been produced. Further, there are no known plans to produce any in the foreseeable future. Accordingly, the continued retention of these requirements serves no purpose.

DATES: *Comment closing date.* Comments must be received on or before November 27, 1995.

Proposed effective date: If adopted, the amendments proposed in this notice would become effective 30 days after date of publication of the final rule in the Federal Register.

ADDRESSES: All comments must refer to the docket number and notice number set forth above and be submitted, preferably in 10 copies, to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street SW, Room 5109, Washington, DC 20590. Docket hours are from 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Terri Droneburg, Vehicle Dynamics Group, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone (202) 366–6617; facsimile (202) 366–4329.

For legal issues: Walter Myers, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION: Pursuant to the March 4, 1994 directive entitled ''Regulatory Reinvention Initiative'' from the President to the heads of Federal departments and agencies, NHTSA reviewed all its Federal motor vehicle safety standards and regulations. During the course of this review, the agency identified several requirements and regulations that are potential candidates for rescission, including the non-pneumatic provisions in Standard No. 129, *New non-pneumatic tires for passenger cars.* The agency tentatively concluded from that review that the non-pneumatic tire provisions, among others, could be rescinded because the need for them no longer exists.

In the late 1980's, motor vehicle and tire manufacturers experimented with non-pneumatic spare tires for possible use as inexpensive, temporary spare tires for use on new passenger cars. Anticipating the development of such tires, NHTSA published Standard No. 129 on July 20, 1990, to become effective August 20, 1990 (55 FR 29581). In the same notice, the agency added non-pneumatic tire performance and labeling requirements to Standard No. 110, *Tire selection and rims;* Standard No. 120, *Tire selection and rims for motor vehicles other than passenger cars;* and 49 CFR part 574, *Tire Identification and Recordkeeping.*

Development of such tires and plans for their use, however, were discontinued. Consequently, no non-pneumatic tires are currently being produced and the agency is not aware of any plans to produce them in the future.

Agency Proposal

Since non-pneumatic spare tires are not being produced and, to the agency's knowledge, will not be produced in the foreseeable future, NHTSA tentatively concludes that there is no need to retain Standard No. 129 and the pertinent portions of Standard Nos. 110, 120, and 49 CFR part 574 in effect, and proposes to rescind them. The agency seeks comment on that tentative conclusion. In addition, NHTSA solicits comment on whether, if a different type of non-pneumatic spare tire were to be developed in the future, the existing requirements are sufficiently generic to accommodate such new technology or whether amendment to the standard would be necessary in any case to accommodate the new technology.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, *Regulatory Planning and Review.* NHTSA has considered the impact of this rulemaking action under the DOT's regulatory policies and procedures and has determined that it is not ''significant'' within the meaning of those policies and procedures.

The amendments proposed in this notice are intended to eliminate unneeded and unnecessary regulations in accordance with the President's ''Regulatory Reinvention Initiative,'' thereby simplifying and streamlining the body of Federal regulations. Since non-pneumatic tires are not now being produced and to the agency's knowledge will not be produced in the foreseeable future, the amendments proposed in this notice would have no cost impacts or leadtime effects for either manufacturers or consumers. The impacts are so minimal that preparation of a full regulatory evaluation was not warranted.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. As noted above, this proposal would not have any impact on manufacturers of motor vehicles or motor vehicle equipment, thus would have no impact on the costs of motor vehicles or motor vehicle equipment. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.′

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No state laws would be affected.

National Environmental Policy Act

The agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, Pub. L. 96–511, the agency notes that there are no information collection requirements associated with this rulemaking action.

Executive Order 12778 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision thereof may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the state's standard is identical to the Federal standard. However, the United States government, a state or political subdivision thereof may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the

Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. This section does not require submission of a petition for reconsideration or other administrative procedures before parties may file suit in court.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. Necessary attachments may be appended to these submissions without regard to the 15-page limit.

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and 7 copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in 49 CFR part 512, the agency's confidential business information regulation.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available to the public for examination in the docket at the above address both before and after the closing date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The agency will continue to file relevant information in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket section should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.110 would be amended by revising S2 and S4.1; by removing the definitions of ''non-pneumatic rim,'' ''non-pneumatic spare tire assembly,'' ''non-pneumatic tire and non-pneumatic tire assembly,'' and ''wheel center member'' from S3; by removing S4.3(e); and by removing S5 through S8.2, to read as follows:

§ 571.110 Standard No. 110; Tire selection and rims.

* * * * *

S2. *Application.* This standard applies to passenger cars.

* * * * *

S4.1. *General.* Passenger cars shall be equipped with tires that meet the requirements of § 571.109, *New Pneumatic Tires—Passenger Cars.*

* * * * *

3. Section 571.120 would be amended by revising S3, S5.1.1, and the introductory paragraph to S5.3; and by removing S5.3.3, and S6 through S9.2, to read as follows:

§ 571.120 Standard No. 120; Tire selection and rims for motor vehicles other than passenger cars.

* * * * *

S3. *Application.* This standard applies to multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles, and to rims for use on those vehicles.

* * * * *

S5.1.1 Except as specified in S5.1.3, each vehicle equipped with pneumatic tires for highway service shall be equipped with tires that meet the requirements of § 571.109, *New Pneumatic Tires for Passenger Cars,* or § 571.119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars,* and rims that are listed by the manufacturer of the tires as suitable for use with those tires, in accordance with S4.4 of § 571.109 or S5.1 of § 571.119, as applicable.

* * * * *

S5.3 *Label Information.*

Each vehicle shall show the information specified in S5.3.1 and S5.3.2 in the English language, lettered in block capitals and numbers not less than 3 thirty-seconds of an inch high and in the format set forth following this section. This information shall appear either—

* * * * *

§ 571.129 [Removed]

4. Section 571.129 would be removed in its entirety from the CFR.

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

5. The authority citation for Part 574 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

6. Section 574.4 would be revised it to read as follows:

§ 574.4 Applicability.

This part applies to manufacturers, brand name owners, retreaders, distributors, and dealers of new and retreaded tires for use on motor vehicles manufactured after 1948. However, it does not apply to persons who retread tires solely for their own use.

7. Section 574.5 would be amended by revising the introductory paragraph and paragraph (b) to read as follows:

§ 574.5 Tire identification requirements.

Each tire manufacturer shall conspicuously label on one sidewall of each tire it manufactures, except tires manufactured exclusively for mileage-contract purchasers, by permanently molding into or onto the sidewall, in the manner and location specified in Figure 1, a tire identification number containing the information set forth in paragraphs (a) through (d) of this section. Each tire retreader, except tire retreaders who retread tires solely for their own use, shall conspicuously label one sidewall of each tire it retreads by permanently molding or branding into or onto the sidewall, in the manner and location specified in Figure 2, a tire identification number containing the information set forth in paragraphs (a) through (d) of this section. In addition, the DOT symbol required by applicable Federal Motor Vehicle Safety Standards shall be molded into or onto the tire sidewall and shall be located as shown in Figures 1 and 2. The DOT symbol shall not appear on tires to which no Federal Motor Vehicle Safety Standard applies, except that the DOT symbol on tires for use on motor vehicles other than passenger cars may, prior to retreading, be removed from the

sidewall or allowed to remain on the sidewall, at the retreader's option. The symbols to be used in the tire identification number for tire manufacturers and retreaders are: ''A, B, C, D, E, F, H, J, K, L, M, N, P, R, T, U, V, W, X, Y, 1, 2, 3, 4, 5, 6, 7, 8, 9, 0.'' Tires manufactured or retreaded exclusively for mileage-contract purchasers are not required to contain a tire identification number if the tire contains the phrase ''for mileage contract use only'' permanently molded into or onto the tire sidewall in lettering a least one-quarter inch high.

* * * * *

(b) *Second grouping.* For new tires, the second group, of no more than two symbols, shall be used to identify the tire size. For retreaded tires, the second group, of no more than two symbols, shall identify the retread matrix in which the tire was processed or a tire size code if a matrix was not used to process the retreaded tire. Each new-tire manufacturer and retreader shall maintain a record of each symbol used, with the corresponding matrix or tire size and shall provide such record to the NHTSA upon written request.

* * * * *

8. Section 574.6 would be amended by revising the introductory paragraph and paragraph (c) to read as follows:

§ 574.6 Identification mark.

To obtain the identification mark required by § 574.5(a), each manufacturer of new or retreaded pneumatic tires shall apply in writing to Tire Identification and Recordkeeping, National Highway Traffic Safety Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, identify itself as a tire manufacturer or retreader and furnish the following information:

* * * * *

(c) The type of tires manufactured at each plant, for example, pneumatic tires for passenger cars, buses, trucks or motorcycles; or pneumatic retreaded tires.

Issued on September 19, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–23690 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

[Docket No. 85–6; Notice 10]

RIN 2127–AA13

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Passenger Car Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation, DOT.

ACTION: Further supplemental notice of proposed rulemaking (FSNPRM).

SUMMARY: This notice proposes amendments to FMVSS Nos. 105 *Hydraulic Brake Systems* and 135, *Passenger Car Brake Systems,* to accommodate electric vehicles. The proposal is based on a supplemental notice of proposed rulemaking (SNPRM; Notice 7) published on January 15, 1993, and responds to comments submitted to that notice. Amendments of FMVSS No. 105 based on this FSNPRM (Notice 10) would apply to electric trucks, buses, and multipurpose passenger vehicles. They would also apply to electric passenger cars which had not availed themselves of the option of conforming to FMVSS No. 135, which will become mandatory for all passenger cars manufactured on and after September 1, 2000.

COMMENT DATE: Comments on the FSNPRM are due November 27, 1995.

ADDRESSES: Comments should be addressed to Docket 85–6; Notice 10, and submitted to Docket Room, NHTSA, Room 5108, 400 Seventh St. SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: T. Droneburg, Office of Vehicle Safety Standards, NHTSA (Phone: 202–366–6617; FAX: 202–366–4329).

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Background

On January 15, 1993, NHTSA published a Supplemental Notice of Proposed Rulemaking (SNPRM) concerning brake system performance of electric vehicles (EVs) (Docket No. 85–6; Notice 7, 58 FR 4649). The reader is referred to that notice for information on the rulemaking history of electric vehicle braking, and for background discussion of the proposed brake system requirements.

Notice 7 proposed amendments to FMVSS No. 105 *Hydraulic Brake Systems* and revised portions of a proposed FMVSS No. 135 *Passenger Car Brake Systems.* FMVSS No. 135 has now been issued as a final rule (Notice 8, 60 FR 6411), effective March 6, 1995. Passenger car manufacturers, including those of EVs, have the choice of compliance with either braking standard between now and September 1, 2000. At that time, FMVSS No. 135 will become the sole brake standard that applies to passenger cars. However, FMVSS No. 105 will continue to apply to vehicles other than passenger cars. Because EVs are not restricted to passenger cars, and include pickup trucks, vans, and buses, amendments to FMVSS No. 105 are required to accommodate them.

Comments on the SNPRM were received from General Motors Corporation (GM), Mitsubishi Motors America Inc., American Auto Manufacturers Association (AAMA), Marc Pelletier and Associates (Pelletier), PSA Peugeot Citröen (Peugeot), SMH Swiss Corp. (SMH), Chrysler Corporation, Ford Motor Company, ITT TEVES of Germany (ITT), BMW of North America, American Honda, and Toyota.

The comments supported the rulemaking, although Ford, Chrysler, Peugeot, and Pelletier argued that it is premature at this time to initiate rulemaking because of rapidly advancing technology and the chance that a standard might unduly influence or stifle EV brake system development and improvement. NHTSA is aware of these concerns and is developing its proposals to set safety performance requirements without imposing design restrictions.

Peugeot and Pelletier were concerned with the role of regenerative braking systems (RBS) in service brake performance. Both believe that RBS

should be allowed to contribute to determination of an EV's braking ability under the FMVSS. NHTSA agrees in principle, but the agency believes that certain conditions must be satisfied in order for RBS to be considered to be part of the service brake system. In particular, application of any service braking must be by means of the service brake control (brake pedal) and there must be no means of declutching or turning the RBS on and off. This subject is discussed in more detail later in this notice, under the individual requirements.

The SNPRM's preamble had stated (p. 4650) that all known EV designs are equipped with antilock braking systems (ABS). Chrysler agreed that this was true for present designs but that it could not be assumed that all future EVs would have ABS. NHTSA does not assume that all future EVs will have ABS, and the proposed amendments to both standards provide for both possibilities. The subject of mandatory ABS for future vehicles of all types is being treated in separate rulemaking actions by the agency.

This FSNPRM reflects refinements of the earlier Notice 7 rather than presenting a different approach. These refinements are discussed below. Unless otherwise indicated, the changes noted apply to both FMVSS No. 105 and FMVSS No. 135.

Definitions

Under Notice 7, ''Maximum speed of an electric vehicle'' would be determined in accordance with SAE Recommended Practice J227a *Electric Vehicle Test Procedure,* February 1976, with the propulsion batteries at not less than 90 percent of full charge at the beginning of the test run.

GM and Peugeot asked that NHTSA designate the appropriate sections of SAE J227a that apply to maximum speed. Under *Acceleration Characteristics on a Level Road,* sections 7.1 through 7.3 of SAE J227a specify that the vehicle is to be accelerated from a standing start at its maximum attainable, or permissible, acceleration rate until either the vehicle's peak speed is reached or until a safe speed limit is attained. This procedure is essentially the same as is currently specified in both FMVSS 105 and 135, except that the length of the roadway used for determining maximum speed is limited to 2 miles. SAE J227a places no limit on the length of the roadway, and gives no objective criterion for a determination that the actual maximum speed has been reached.

Upon further consideration of this issue, NHTSA has tentatively decided that determination of EV maximum speed would be better addressed by modification of the existing procedures than by reference to portions of SAE J227a that are of doubtful objectivity. Although under this FSNPRM roadway length would remain at 2 miles, the agency requests comments on whether EVs are incapable of accelerating to their maximum speed within 2 miles, and, if so, what greater distance would be more appropriate. Commenters should also address any problems a longer distance would create for existing test facilities. A sentence specifying the state of battery charge would still have to be added to both standards. Notice 7 proposed that the lower limit of the state of charge be 90 percent; this notice increases that to 95 percent. This will allow somewhat faster acceleration of the EV, and will also be consistent with the state of charge proposed for the braking performance tests. Accordingly, this notice proposes that a sentence specifying the state of charge of the batteries for determination of maximum speed be added to paragraph S5.1.1.4 of FMVSS No. 105, and to the definition of ''maximum speed'' in FMVSS No. 135.

In Notice 7's proposed definition of ''Regenerative braking system (RBS)'', the propulsion motors may be used as a retarder for partial braking of the vehicle in addition to the service brake system, while returning electrical energy to the batteries. The phrase ''in addition to the service brake system'' has been stricken in the revised proposed definition to remove the implication that a regenerative braking feature cannot be a part of the service brake system, following consideration of comments by ITT and SMH. If the RBS is automatically controlled by an application of the service brake control, and if there is no means for the driver to declutch or otherwise deactivate it, and if the vehicle has no ''neutral'' transmission position, then the effect of the RBS is always present when the service brake control is applied. In that case, NHTSA believes it reasonable to consider the RBS to be part of the service brake system. Since the amount of retardation provided by a RBS is dependent on the state of charge of the vehicle's batteries, the service brake requirements must be met at any state of charge. On the other hand, if the RBS is not controlled by the service brake pedal, or if it can be disconnected or turned off when the service brake control is applied, it is to be deactivated during tests of the service brake system, and is considered an auxiliary braking device (not part of the service brake system) for purposes of those tests. A system that is automatically applied at a low level when the accelerator pedal is released and applied at a higher level when the brake pedal is depressed could still be considered part of the service brake system, as long as the other criteria stated above are met. This view of RBS is consistent with the agency's treatment of other non-friction braking effects, such as exhaust or driveline retarders or engine braking.

In addition, NHTSA is also proposing revising definitions that already exist in the two standards, those of ''Backup system'' and ''Split service brake system.'' The word ''automatically'' would be added in ''Backup system'' in FMVSS No. 105 for consistency so that it would be identical to the definition of the term in FMVSS No. 135. ''Split service brake system'' in both standards would be amended to specify that the system is ''designed so that a single failure in any subsystem (such as a leakage-type failure of a pressure component of a hydraulic subsystem except structural failure of a housing that is common to two or more subsystems, or an electrical failure in an electric subsystem) does not impair the operation of any other subsystem.'' This change recognizes the possibility that vehicles may be equipped with non-hydraulic subsystems, such as hydraulic on the front and electric on the rear.

NHTSA has declined to redefine ''backup system'', ''brake control unit'' and ''directly controlled wheel'' as suggested by Pelletier, which failed to provide reasons for its requests.

NHTSA also declined BMW's request to define EVs to include hybrid-powered vehicles with RBS because the definition of EV proposed already includes vehicles with ''a non-electrical source of power designed to charge batteries''. This term, in NHTSA's view, includes an internal combustion engine which may provide propulsion as an alternative to electric power.

Pelletier wanted additional definitions for ''compound service brake system'', ''electric braking'', ''friction braking'' and ''electromagnetic braking'' which had not been proposed. But the commenter provided no justification for them, nor any indication where they would be used in the FMVSS. Therefore, these definitions are not being proposed in this notice.

Finally, BMW questioned NHTSA's apparently interchangeable use of the terms ''electric'' and ''electronic'', and recommended the term ''electric'' for both. In response to this comment, NHTSA is using ''electric'' where appropriate, but retaining the use of

''electronic'' where use of that term is more appropriate.

Partial Failure

With respect to the partial failure provisions that were proposed to be added to FMVSS No. 105 in a new paragraph S5.1.2.3, GM and AAMA commented that they could be interpreted as requiring partial failure performance during a simultaneous failure of a hydraulic subsystem circuit (as described in S5.1.2.1) and an electric subsystem circuit (as described in proposed S5.1.2.3). In order to avoid any misinterpretation these commenters recommended that S5.1.2.3 be modified to clarify that the vehicle ''shall be capable of stopping from 60 mph within the corresponding distance specified in Column IV of Table II when there is a single failure in an electric brake circuit, and with all other systems intact.'' NHTSA agrees, and S5.1.2.3 is reproposed with more definitive wording.

In addition, new wording is proposed under the partial failure requirements to address failures of an RBS that is part of the service brake system, since the RBS is not a separate ''circuit'' of the service brake system, thus the present wording in the Standards is not appropriate.

Brake System Indicator Lamp

Notice 7 proposed requirements in both FMVSS that brake system indicator lamps must activate under certain conditions ''for a vehicle with electric brake actuation'' and ''for a vehicle with electric transmission of the brake control signal.''

BMW commented that, for a failed electric-control transmission, the requirement for a failure indicator should be limited to the service brake system, and that indication of failures of an electric control transmission of the parking brake should be left to the manufacturer. NHTSA agrees. The purpose of the indicator is to evaluate the integrity of the electric control transmission circuitry which, if failed, will have an effect on the performance of the service brakes. Accordingly, NHTSA is adding the word ''service'' to Notice 7's proposed S5.3.1 (e) and (f) of FMVSS No. 105 and S5.5.1 (e) and (f) of FMVSS No. 135.

GM, Ford, AAMA, Peugeot, BMW, and Honda recommended that failure of RBS should only be indicated for EVs that depend upon RBS to meet the stopping distance requirements. NHTSA disagrees, and believes that any failure of a part of the service brake system should be indicated, whether or not that component is required for the vehicle to meet the stopping distance requirements. If a vehicle is equipped with RBS which is part of the service brake system, then the failure warning requirement should apply to it. The suggestion of the commenters is akin to saying, for example, that if a vehicle is capable of meeting the service brake stopping distance requirements with its rear brakes disconnected, then there is no need to warn a driver of a failure in the vehicle's rear brakes. NHTSA does not see any logic in the commenters' views.

Toyota commented that an RBS failure indicator should be amber rather than red because the driver would still be able to bring the vehicle safely to a stop with the hydraulic brake system. NHTSA has not adopted Toyota's suggestion. The red indicator color signifies that the EV's deceleration capability has decreased due to a failure in the service brake system, and this is true whether the failure is in a hydraulic circuit or in the RBS.

Procedure for Determining Battery State of Charge

NHTSA proposed that the state of charge of the propulsion batteries be determined in accordance with SAE J227a *Electric Vehicle Test Procedure*, February 1976 (S6.2.1 of FMVSS No. 105, S6.3.11.1 of Standard No. 135). For clarification, this is being reproposed to specify that the applicable sections of J227a are 3.2.1 through 3.2.4, 3.3.1 through 3.3.2.2, 3.4.1 and 3.4.2, 4.2.1, 5.2, 5.2.1, and 5.3.

Procedures for Charging Batteries During Burnish

Notice 7 proposed that ''[d]uring the burnish procedure, the propulsion batteries may be charged by external means if the vehicle is otherwise unable to complete the burnish procedure'' (proposed S6.2.2 of FMVSS No. 105, S6.3.11.2 of FMVSS No. 135).

GM and AAMA believe it is important to specify clearly the battery state-of-charge for the entire burnish procedure so that different testers obtain the same results when evaluating a given vehicle design. In their view, the state of battery charge can have a dramatic effect on the amount of brake burnish that occurs in EVs, and that it is especially important in EVs with regenerative braking. At the extreme, it is likely that an EV performing the 200-stop burnish with no regenerative braking will experience a significantly greater degree of brake burnish than an EV with maximum regenerative braking. GM, Chrysler and Ford recommended that the batteries be charged to 95 per cent or greater capacity at 40-stop increments.

NHTSA agrees with these comments. The burnish procedures result in a maximum distance between each of the burnish stops of 1.24 miles. The continuous acceleration and deceleration of a burnish procedure could result in fairly extensive battery depletion after approximately 40 stops. Therefore, these sections are being reproposed to specify a condition of 95 percent or greater battery charge after each increment of 40 burnish stops. In response to comments by Ford and GM, charging at a more frequent interval would be permitted during a 40-stop interval if the vehicle is incapable of achieving the initial burnish test speed during that particular 40-stop sequence. In addition, the manufacturer would be permitted the option of recharging by external means or by substituting other propulsion batteries at 95 per cent or greater charge. Substitution responds to Honda's concern that the time needed for recharging batteries could lead to a protracted test.

In addition, if an EV has a manual control for setting the level of regenerative braking, at the beginning of each burnish procedure the control would be set to provide maximum regenerative braking throughout each burnish. This proposed condition is being added at the suggestion of GM which recommended specifying the setting for an RBS control that is driver operated.

Procedure for Charging Batteries During Performance Testing

This affects proposed S6.2.3 of FMVSS No. 105 and S6.3.11.3 of FMVSS No. 135. Under Notice 7, the propulsion batteries would not be recharged during the road tests between burnish procedures. GM, AAMA, Chrysler, Ford, and Honda, all concerned that EVs might not be capable of completing the post-burnish road test sequence on a single battery charge, recommended that the provisions be modified to prescribe the 95 percent or greater state of charge at the onset of each road test procedure and to provide explicit instructions for battery recharging during the road test sequence.

NHTSA concurs with the comment that having the state of charge at 95 percent or greater only at the beginning of the first performance test may create problems with EVs obtaining the test speeds for the latter tests of the sequence, having the necessary driving range to complete the tests, and being able to minimize the fluctuations in the RBS. Therefore, the procedure proposed in Notice 7 is modified to specify that the batteries be charged to not less than

95 percent of capacity at the start of each road test procedure. Substitution of batteries charged to not less than 95 percent of capacity would be allowed as an alternative to recharging. However, no further charging of the propulsion batteries would occur during the performance tests themselves.

Mitsubishi asked that the lower limit of charge of the propulsion batteries at the beginning of the first brake test be changed to from 95 percent to 90 percent, because the high speed test is carried out at not less than 90 percent of full charge, and because it believes that it is difficult to distinguish a fully charged condition with an accuracy of 5 percent. NHTSA does not agree with these comments. Under Notice 7, the state of charge at the beginning of each test would be at not less than 95 percent of full charge. By adopting this test condition, NHTSA intends that the batteries be essentially at full charge, and the 5 percent tolerance allows a reasonable margin for accuracy of measurement.

The Appropriate Value for Low Battery Charge

Under Notice 7 (S6.2.6 of FMVSS No. 105, S6.3.11.6 of FMVSS No. 135), EVs equipped with electric brakes would perform certain specified tests ''with the propulsion batteries at one percent or less of full charge.'' GM, AAMA, and Chrysler commented that the proposed 1 percent state of charge for an EV's propulsion batteries is far more stringent than what is required to satisfy the safety need to assure the efficiency of an EV's brake system as the propulsion battery charge declines to minimum levels. AAMA commented that an EV in actual use would never undergo all the different types of stops prescribed in the standard after it reaches the threshold of immobility.

Comments indicated that those EVs with electric brake systems have the systems receiving power either from the EV's propulsion batteries, or from an auxiliary battery. BMW and Chrysler also indicated that automatic shut-down of the propulsion motors is usually provided to avoid damaging the batteries at low charge and to provide a continuing source of energy for lighting and hazard warning system flashers. However, not all EVs have this automatic shut-down feature.

This FSNPRM takes each of the above into account. For EVs equipped with electric brakes powered by the propulsion batteries, at the beginning of each of the specified tests, for those EVs with automatic shut-down capability of the propulsion system, the propulsion batteries would be not less than one percent and not more than two percent above the EV actual automatic shut-down critical value. The critical value is determined by measuring the state-of-charge of the propulsion battery(s) at the instant that automatic shut-down occurs. For those EVs with no automatic shut-down capability, the batteries would be at not less than one percent and not more than two percent above the state of charge at which the brake failure warning indicator is illuminated. For vehicles which have an auxiliary battery(s) that provides electrical energy to operate the electric brakes (whether EVs or not) the auxiliary batteries would be at not less than one percent and not more than two percent above the state of charge at which the brake failure warning indicator is illuminated.

Procedure for Testing at Full Charge and Low Charge

GM thought that NHTSA should add a modified effectiveness test near the end of the road test sequence, specifically, immediately after the spike stop test (S7.17–FMVSS No. 105) or the recovery performance test (S7.17–FMVSS No. 135). Such a test with depleted batteries could be used to show that brakes operate effectively under a depleted charge condition. NHTSA declines to accept this suggestion. The intent of the standard is not to match real-world driving conditions, but simply to assure that an EV will continue to operate safely if any one of the test conditions occurs while the vehicle is in operation.

GM also recommended that this new test be applicable to all EVs rather than limiting it to EVs equipped with electric brakes as proposed in the SNPRM. The justification for this suggestion is that EVs with conventional hydraulic brakes could rely on electricity for certain aspects of brake performance, such as power assist.

NHTSA has decided not to propose the new test suggested by GM. There is already a failed power assist test in the standard, and the approach proposed satisfactorily treats the low battery charge situation.

Other Test Conditions

GM informed NHTSA that it has found it can be difficult to achieve the minimum initial brake temperatures specified in FMVSS Nos. 105 and 135 when relatively high levels of regenerative braking are present. GM recommended that manufacturers be allowed the option of disregarding the prescribed initial brake temperatures when testing EVs equipped with RBS. However, GM believed that the temperatures could be achieved if the agency adopted its recommendation to specify that batteries be charged to 95 percent or greater at the onset of each of the road test procedures. Since NHTSA has, in fact, made this change in this FSNPRM, the agency does not anticipate that EVs equipped with RBS will have any difficulty achieving initial brake temperatures for the road test procedures.

Peugeot was concerned that S6.3.11.5 as proposed for FMVSS No. 135 in Notice 7 (S6.3.13.2 of this FSNPRM) would not allow use of its steering column lock to disable the EV motor for tests to be conducted ''in neutral.'' The language permits the use of any means with which the vehicle is equipped that disconnects the drivetrain from the electric propulsion source. However, the agency would interpret that language as meaning any means that is available while the vehicle is being driven. A steering column key lock would only be used when the vehicle is parked, and as such would not be available during driving. Therefore, the vehicle would be considered to have no neutral position, and would be tested accordingly.

Comments were also received on the vehicle test condition of proposed S7.7.2(e) of FMVSS No. 135. The test is conducted ''with no electromotive force applied to the vehicle propulsion motor(s)''. Pelletier would qualify this phrase by adding ''other than any electromagnetic force that is automatically applied.'' In NHTSA's opinion, this addition is unnecessary. The electromagnetic force referred to is a residual force resulting from the magnetic fields within the motor, and is not considered to be ''applied'' to the motor.

Static Parking Brake Test

Proposed S7.7.1.3 in FMVSS No. 105 and S7.12.2(o) in FMVSS No. 135 would add language to clarify the means for activating electric parking brakes. GM believed that Notice 7's language would be restricted to designs which utilize the foundation brake friction elements to provide the parking brake function. It asked the agency to consider modifying the requirement to read: ''[f]or vehicles with electrically activated parking brakes, apply the parking brakes by activating the parking brake control.'' NHTSA concurs with this suggestion and appropriate changes are being proposed in this FSNPRM.

Inoperative Brake Power or Power Assist Unit

Toyota commented that S7.10.3 (FMVSS No. 105) and S7.11.3(m) (FMVSS No. 135), as proposed by the SNPRM could be read as requiring

vehicles to be tested to simulate simultaneous failure of an electrically-actuated brake system and another brake power or power assist unit. In response to Toyota's comment, modified language is proposed to clarify that tests would be ''conducted with any single electrical failure in the electrically-actuated brake system instead of a failure of any other brake or brake power assist unit, and all other systems intact.''

ABS and Dynamic Parking Brake Tests

FMVSS No. 135 as issued did not adopt the proposed S7.3 ABS performance, of which S7.3.4 *Test procedures and performance requirements* and the SNPRM's proposed S7.3.4.4 would have been a part. Therefore S7.3.4.4, or a variation thereof, is not being reproposed at this time.

Nor did FMVSS No. 135 as issued adopt a dynamic parking brake test, thus rendering it unnecessary for the agency to adopt proposed S7.13.1(d) which would have excepted electric parking brakes from such a test.

Adhesion Utilization—Torque Wheel Method

With respect to the application of the torque wheel test to EVs with electric brakes and/or RBS (proposed in Notice 7 as S7.4.5.3 of Standard No. 135, now proposed as S7.4.5.1), Notice 7 asked for comments, pointing out that the torque wheel method utilizes hydraulic line pressure in the calculations which obviously would not be available for electric brakes. GM commented that some adaptation of the method might be required for an EV that was manufactured with electrically actuated front brakes and without ABS. Mitsubishi recommended that an alternative method for calculating the torque wheel test for EVs with RBS be incorporated, such as a test that calculates the amount of braking effort exerted by the operator on the brake pedal. Ford believes that the current torque wheel test procedure is valid in concept but must be adjusted to be more comprehensive for mixed type brake systems.

NHTSA is aware that the torque wheel test will only accommodate vehicles with hydraulic brakes on at least one axle, and that any vehicle with ABS is not subject to the test. For vehicles with electric brakes on all wheels, the torque wheel test would have to be studied in depth to find the correct factors and test procedures for converting electrical energy into brake torque for purposes of calculating objective brake factors. However, this would be appropriate only for an EV without ABS that is braked only electrically, and NHTSA is unaware that any such configuration is planned for production. Thus, there appears to be no present need for the agency to give further consideration to this issue. If and when an all electric-braked vehicle without ABS is planned for production, the agency could revisit this issue. However, NHTSA believes that it would not be appropriate to expend extensive agency resources to accommodate a vehicle design that in all probability will never be built.

Similarly, for a vehicle equipped with RBS that is not under the control of ABS, the adhesion utilization of the vehicle would be affected by the RBS in a manner that would be dependent on the state of charge of the vehicle's batteries. For such a vehicle, the torque wheel method of calculating adhesion utilization curves that is in Standard No. 135 would not be directly applicable. The most recent draft of proposed ECE Regulation 13–H would require, for such a vehicle, that the adhesion utilization provisions be met under the conditions of both minimum and maximum regenerative braking. While the agency agrees in concept with this approach, Regulation 13–H does not specify any detailed method for obtaining the adhesion utilization curves as Standard No. 135 does. NHTSA believes that a research program would be necessary to develop modifications to the present procedures to accommodate the effects of RBS, but, similar to the all electric-braked issue, questions whether such a vehicle would ever be built. Therefore, requirements to accomodate such a system are not included in this notice. The agency requests comments on whether any manufacturer has plans to produce an electric vehicle that is equipped with RBS that is part of the service brake system but that is not also equipped with ABS. At present, the agency is not aware of any such plans, and does not believe it would be appropriate to expend limited agency resources to develop requirements for a design that will in all probability never be built. If any manufacturer does foresee such a vehicle being built, the agency solicits comments on what would be appropriate adhesion utilization test procedures for such a vehicle.

The reader will find that provisions of this FSNPRM not discussed by this notice are substantially the same as those proposed by Notice 7.

Proposed Effective Date

It is tentatively found for good cause shown that an effective date earlier than 180 days after issuance of the final rule would be in the public interest, and it is proposed that the effective date would be 30 days after publication of the final rule.

Regulatory Analysis

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking has not been reviewed under Executive Order 12866. NHTSA has considered the economic implications of this regulation and determined that it is not significant within the meaning of the DOT Regulatory Policies and Procedure. It does not initiate a substantial regulatory program or involve a change in policy.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Motor vehicle manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on ''Federalism.'' It has been determined that the rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action would not have a significant effect upon the environment. There is no environmental impact associated with adaptation of test procedures to make them more appropriate for vehicles already required to comply with the Federal motor vehicle safety standards. The rulemaking action would not have a direct effect. However, to the extent that this rulemaking might facilitate the introduction of Evs which are powered by an electric motor drawing current from rechargeable storage batteries, fuel cells, or other portable sources of electric current, and which may include a nonelectrical source of power designed to charge batteries and components thereof, the rulemaking would have a beneficial effect upon the environment and reduce fuel consumption because EVs emit no

hydrocarbon emissions and do not depend directly upon fossil fuels to propel them.

Executive Order 12778 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30161 of Title 49 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Comments

Interested persons are invited to submit comments on the FSNPRM. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.105 would be amended by:

a. Revising its heading;

b. Revising S1, S3, the definitions of ''backup system'' and ''split service brake system'' in S4 and adding to S4, in alphabetical order, definitions of ''Electric vehicle *or* EV'' and ''Regenerative braking system *or* RBS'';

c. Amending S5.1.1.4 to add a sentence at the end thereof below the undesignated table;

d. Adding S5.1.2.3, S5.1.2.4, and S5.1.3.5;

e. Revising the introductory text of S5.3.1 and adding S5.3.1(e), (f), and (g);

f. Revising the introductory text of S5.3.5(c)(1) and S5.4.3;

g. Revising S5.5;

h. Adding S6.2 through S6.2.6;

i. Revising the introductory text of S7.7.1.3 and adding S7.7.1.3(c); and

j. Adding S7.9.5 and S7.9.6.

The revised and added heading and paragraphs would read as follows:

§ 571.105 Standard No. 105; Hydraulic and/or electric brake systems.

S1. *Scope.* This standard specifies requirements for hydraulic and/or electric service brake systems and associated parking brake systems.

* * * * *

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses with hydraulic and/or electric service brake systems.

S4. *Definitions.*

* * * * *

Backup system means a portion of a service brake system, such as a pump, that automatically supplies energy, in the event of a primary brake power source failure.

* * * * *

Electric vehicle or *EV* means a motor vehicle that is powered by an electric motor drawing current from rechargeable storage batteries, fuel cells, or other portable sources of electrical current, and which may include a non-electrical source of power designed to charge batteries and components thereof.

* * * * *

Regenerative braking system or *RBS* means an electrical energy system that is installed in an EV for recovering kinetic energy, and which uses the propulsion motor(s) as a retarder for partial braking of the EV while returning electrical energy to the propulsion batteries.

* * * * *

Split service brake system means a brake system consisting of two or more subsystems actuated by a single control, designed so that a single failure in any subsystem (such as a leakage-type failure of a pressure component of a hydraulic subsystem except structural failure of a housing that is common to two or more subsystems, or an electrical failure in an electric subsystem) does not impair the operation of any other subsystem.

* * * * *

S5.1.1.4 * * * For an EV, the speed attainable in 2 miles is determined with the propulsion batteries at a state of charge of not less than 95 percent at the beginning of the run.

S5.1.2 *Partial failure.*

* * * * *

S5.1.2.3 For a vehicle manufactured with a service brake system in which the brake signal is transmitted electrically between the brake pedal and some or all of the foundation brakes, regardless of the means of actuation of the foundation brakes, the vehicle shall be capable of stopping from 60 mph within the corresponding distance specified in Column IV of Table II with any single failure in any circuit that electrically transmits the brake signal, and with all other systems intact.

S5.1.2.4 For an EV manufactured with a service brake system that incorporates RBS, the vehicle shall be capable of stopping from 60 mph within the corresponding distance specified in Column IV of Table II with any single failure in the RBS, and with all other systems intact.

* * * * *

S5.1.3.5 *Electric brakes.* Each vehicle with electrically-actuated

service brakes (brake power unit) shall comply with the requirements of S5.1.3.1 with any single electrical failure in the electrically-actuated service brakes and all other systems intact.

* * * * *

S5.3 *Brake system indicator lamp.*

* * *

S5.3.1 An indicator lamp shall be activated when the ignition (start) switch is in the ''on'' (''run'') position and whenever any of the conditions (a) or (b), (c), (d), (e), (f), and (g) occur:

* * * * *

(e) For a vehicle with electrically-actuated service brakes, failure of the source of electric power to the brakes, or diminution of state of charge of the batteries to less than a level specified by the manufacturer for the purpose of warning a driver of degraded brake performance.

(f) For a vehicle with electric transmission of the service brake control signal, failure of a brake control circuit.

(g) For an EV with RBS that is part of the service brake system, failure of the RBS.

* * * * *

S5.3.5 * * *

(c)(1) If separate indicators are used for one or more of the conditions described in S5.3.1(a) through S5.3.1(g) of this standard, the indicator display shall include the word ''Brake'' and appropriate additional labeling, except as provided in (c)(1)(A) through (D) of this paragraph.

* * * * *

S5.4.3 *Reservoir labeling*—Each vehicle equipped with hydraulic brakes shall have a brake fluid warning statement that reads as follows, in letters at least one-eighth of an inch high: ''WARNING, Clean filler cap before removing. Use only _____ fluid from a sealed container.'' (Inserting the recommended type of brake fluid as specified in 49 CFR 571.116, e.g., ''DOT 3''). The lettering shall be—

S5.5 *Antilock and variable proportioning brake systems.* In the event of failure (structural or functional) in an antilock or variable proportioning brake system, the vehicle shall be capable of meeting the stopping distance requirements specified in S5.1.2 for service brake system partial failure. For an EV that is equipped with both ABS and RBS that is part of the service brake system, the ABS must control the RBS.

* * * * *

S6.2 Electric vehicles and electric brakes.

S6.2.1 The state of charge of the propulsion batteries is determined in accordance with SAE Recommended Practice J227a, *Electric Vehicle Test Procedure,* February 1976. The applicable sections of J227a are 3.2.1 through 3.2.4, 3.3.1 through 3.3.2.2, 3.4.1 and 3.4.2, 4.2.1, 5.2, 5.2.1, and 5.3.

S6.2.2 At the beginning of the first effectiveness test specified in S7.3, the propulsion batteries are at a state of charge of not less than 95 percent. During each burnish procedure, the propulsion batteries are restored to a state of charge of not less than 95 percent after each increment of 40 burnish stops until each burnish procedure is complete. The batteries may be charged at a more frequent interval during a particular 40-stop increment only if the EV is incapable of achieving the initial burnish test speed during that increment. During each burnish procedure, the propulsion batteries may be charged by an external means or replaced by batteries that are at a state of charge of not less than 95 percent. For EVs having a manual control for setting the level of regenerative braking, the manual control, at the beginning of each burnish procedure, is set to provide maximum regenerative braking throughout the burnish.

S6.2.3 At the beginning of each performance test in the test sequence (S7.3, S7.5, S7.7 through S7.11, and S7.13 through S7.19 of this standard), unless otherwise specified, an EV's propulsion batteries are at a state of charge of not less than 95 percent (the batteries may be charged by external means or replaced by batteries that are at a state of charge of not less than 95 percent). No further charging of the propulsion batteries occurs during any of the performance tests in the test sequence of this standard.

S6.2.4 (a) For an EV equipped with RBS, the RBS is considered to be part of the service brake system if it is automatically controlled by an application of the service brake control, if there is no means provided for the driver to disconnect or otherwise deactivate it, and if the vehicle has no ''neutral'' transmission position. This RBS is operational during all burnishes and all tests, except for the test of a failed RBS. If the level of retardation provided by this RBS is subject to control by the driver (other than through the service brake control), it is set to produce the maximum regenerative braking effect during the burnishes, and the minimum regenerative braking effect during the test procedures.

(b) If the RBS is not part of the service brake system, it is operational and set to produce the maximum regenerative braking effect during the burnishes, and is disabled during the test procedures.

S6.2.5 For tests conducted ''in neutral,'' the operator of an EV with no ''neutral'' position (or other means such as a clutch for disconnecting the drive train from the propulsion motor(s)) does not apply any electromotive force to the propulsion motor(s). Any electromotive force that is applied to the propulsion motor(s) automatically remains in effect unless otherwise specified by the test procedure.

S6.2.6 A vehicle equipped with electrically-actuated service brakes also performs the tests specified in S7.3, S7.5, S7.7 through S7.11, and S7.13 through S7.19 of this standard with the batteries providing power to those electrically-actuated brakes, at the beginning of each test, in a depleted state of charge for condition (a), (b), or (c) of this paragraph as appropriate. An auxiliary means may be used to accelerate an EV to test speed. The tests in S6.2.6 are conducted after completing the tests in S6.2.3.

(a) For an EV equipped with electrically-actuated service brakes deriving power from the propulsion batteries, and with automatic shut-down capability of the propulsion motor(s), the propulsion batteries are at not more than two percent and not less than one percent above the EV actual automatic shut-down critical value. The critical value is determined by measuring the state-of-charge of the propulsion battery(s) at the instant that automatic shut-down occurs.

(b) For an EV equipped with electrically-actuated service brakes deriving power from the propulsion batteries, and with no automatic shut-down capability of the propulsion motor(s), the propulsion batteries are at not more than two percent and not less than one percent above the actual state of charge at which the brake failure warning signal, required by S5.3.1(e) of this standard, is illuminated.

(c) For a vehicle which has an auxiliary battery(s) that provides electrical energy to operate the electrically-actuated service brakes, the auxiliary battery(s) is at not more than two percent and not less than one percent above the actual state of charge at which the brake failure warning signal, required by S5.3.1(e) of this standard, is illuminated.

* * * * *

S7.7.1 *Test procedure for requirements of S5.2.1.*

* * * * *

S7.7.1.3 With the vehicle held stationary by means of the service brake

control, apply the parking brake by a single application of the force specified in (a), (b), or (c) of this paragraph, except that a series of applications to achieve the specified force may be made in the case of a parking brake system design that does not allow the application of the specified force in a single application:

* * * * *

(c) For a vehicle using an electrically-activated parking brake, apply the parking brake by activating the parking brake control.

* * * * *

S7.9 *Service brake system test—partial failure.*

* * * * *

S7.9.5 For a vehicle in which the brake signal is transmitted electrically between the brake pedal and some or all of the foundation brakes, regardless of the means of actuation of the foundation brakes, the tests in S7.9.1 through S7.9.3 of this standard are conducted by inducing any single failure in any circuit that electrically transmits the brake signal, and all other systems intact. Determine whether the brake system indicator lamp is activated when the failure is induced.

S7.9.6 For an EV with RBS that is part of the service brake system, the tests specified in S7.9.1 through S7.9.3 are conducted with the RBS disconnected and all other systems intact. Determine whether the brake system indicator lamp is activated when the RBS is disconnected.

3. Section 571.135 would be amended by:

a. Revising the definitions of ''backup system'', ''maximum speed'', and ''split service brake system'' in S4, and adding in S4, in alphabetical order, definitions for ''Electric vehicle'' and ''Regenerative braking system'';

b. Adding S5.1.3;

c. Revising the introductory text of S5.4.3 and S5.5.1 and adding S5.5.1 (e), (f), and (g);

d. Revising the introductory text of S5.5.5(d);

e. Adding S6.3.11, S6.3.12, and S6.3.13;

f. Revising S7.10, S7.10.3(f), and S7.10.4;

g. Adding S7.11.3(m); and

h. Revising S7.12.2(i).

The revised and added paragraphs would read as follows:

§ 571.135 Standard No. 135; Passenger Car Brake Systems.

* * * * *

S4. *Definitions.*

* * * * *

Electric vehicle or *EV* means a motor vehicle that is powered by an electric motor drawing current from rechargeable storage batteries, fuel cells, or other portable sources of electrical current, and which may include a non-electrical source of power designed to charge batteries and components thereof.

* * * * *

Maximum speed of a vehicle or *VMax* means the highest speed attainable by accelerating at a maximum rate from a standing start for a distance of 3.2 km (2 miles) on a level surface, with the vehicle at its lightly loaded vehicle weight, and, if an EV, with the propulsion batteries at a state of charge of not less than 95 percent at the beginning of the run.

* * * * *

Regenerative braking system or *RBS* means an electrical energy system that is installed in an EV for recovering kinetic energy, and which uses the propulsion motor(s) as a retarder for partial braking of the EV while returning electrical energy to the propulsion batteries.

Split service brake system means a brake system consisting of two or more subsystems actuated by a single control, designed so that a single failure in any subsystem (such as a leakage-type failure of a pressure component of a hydraulic subsystem except structural failure of a housing that is common to two or more subsystems, or an electrical failure in an electric subsystem) does not impair the operation of any other subsystem.

* * * * *

S5.1.3 *Regenerative braking system.* (a) For an EV equipped with RBS, the RBS is considered to be part of the service brake system if it is automatically activated by an application of the service brake control, if there is no means provided for the driver to disconnect or otherwise deactivate it, and if the vehicle has no ''neutral'' transmission position.

(b) For an EV that is equipped with both ABS and RBS that is part of the service brake system, the ABS must control the RBS.

* * * * *

S5.4.3. *Reservoir labeling.* Each vehicle equipped with hydraulic brakes shall have a brake fluid warning statement that reads as follows, in letters at least 3.2 mm (⅛ inch) high: ''WARNING: Clean filler cap before removing. Use only _____ fluid from a sealed container.'' (Inserting the recommended type of brake fluid as specified in 49 CFR 571.116, *e.g.*, ''DOT 3.'') The lettering shall be:

* * * * *

S5.5.1. *Activation.* An indicator shall be activated when the ignition (start) switch is in the ''on'' (''run'') position and whenever any of conditions (a) through (g) occur:

* * * * *

(e) For a vehicle with electrically-actuated service brakes, failure of the source of electric power to those brakes, or diminution of state of charge of the batteries to less than a level specified by the manufacturer for the purpose of warning a driver of degraded brake performance.

(f) For a vehicle with electric transmission of the service brake control signal, failure of a brake control circuit.

(g) For an EV with a regenerative braking system that is part of the service brake system, failure of the RBS.

* * * * *

S5.5.5. *Labeling.*

* * * * *

(d) If separate indicators are used for one or more of the conditions described in S5.5.1(a) through S5.5.1(g), the indicators shall display the following wording:

* * * * *

S6.3.11 *State of charge of batteries for EVs.*

S6.3.11.1 The state of charge of the propulsion batteries is determined in accordance with SAE Recommended Practice J227a, *Electric Vehicle Test Procedure,* February 1976. The applicable sections of J227a are 3.2.1 through 3.2.4, 3.3.1 through 3.3.2.2, 3.4.1 and 3.4.2, 4.2.1, 5.2, 5.2.1 and 5.3.

S6.3.11.2 At the beginning of the burnish procedure (S7.1 of this standard) in the test sequence, the propulsion batteries are at a state of charge of not less than 95 percent. During the 200-stop burnish procedure, the propulsion batteries are restored to a state of charge of not less than 95 percent after each increment of 40 burnish stops until the burnish procedure is complete. The batteries may be charged at a more frequent interval during a particular 40-stop increment only if the EV is incapable of achieving the initial burnish test speed during that increment. During the burnish procedure, the propulsion batteries may be charged by external means or replaced by batteries that are at a state of charge of not less than 95 percent. For an EV having a manual control for setting the level of regenerative braking, the manual control, at the beginning of the burnish procedure, is set to provide maximum regenerative braking throughout the burnish.

S6.3.11.3 At the beginning of each performance test in the test sequence

(S7.2 through S7.17 of this standard), unless otherwise specified, an EV's propulsion batteries are at a state of charge of not less than 95 percent (the batteries may be charged by external means or replaced by batteries that are at a state of charge of not less than 95 percent). No further charging of the propulsion batteries occurs during any of the performance tests in the test sequence of this standard.

S6.3.12 *State of charge of batteries for electrically-actuated service brakes.* A vehicle equipped with electrically-actuated service brakes also performs the tests specified in S7.2 through S7.17 of this standard with the batteries providing power to those electrically-actuated brakes, at the beginning of each test, in a depleted state of charge for conditions (a), (b), or (c) as appropriate. An auxiliary means may be used to accelerate an EV to test speed. The tests in S6.3.12 are conducted after completing the tests in S6.3.11.3.

(a) For an EV equipped with electrically-actuated service brakes deriving power from the propulsion batteries and with automatic shut-down capability of the propulsion motor(s), the propulsion batteries are at not more than two percent and not less than one percent above the EV actual automatic shut-down critical value. The critical value is determined by measuring the state-of-charge of the propulsion battery(s) at the instant that automatic shut-down occurs.

(b) For an EV equipped with electrically-actuated service brakes deriving power from the propulsion batteries and with no automatic shut-down capability of the propulsion motor(s), the propulsion batteries are at not more than two percent and not less than one percent above the actual state of charge at which the brake failure warning signal, required by S5.5.1(e) of this standard, is illuminated.

(c) For a vehicle which has an auxiliary battery(s) that provides electrical energy to operate the electrically-actuated service brakes, the auxiliary battery(s) is at not more than two percent and not less than one percent above the actual state of charge at which the brake failure warning signal, required by S5.5.1(e) of this standard, is illuminated.

S6.3.13 *Electric vehicles.*

S6.3.13.1 (a) For an EV equipped with an RBS that is part of the service brake system, the RBS is operational during the burnish and all tests, except for the test of a failed RBS. If the level of retardation provided by this RBS is subject to control by the driver (other than through the service brake control), it is set to produce the maximum regenerative braking effect during the burnish, and the minimum regenerative braking effect during the test procedures.

(b) For an EV equipped with an RBS that is not part of the service brake system, the RBS is operational and set to produce the maximum regenerative braking effect during the burnish, and is disabled during the test procedures.

S6.3.13.2 For tests conducted ''in neutral'', the operator of an EV with no ''neutral'' position (or other means such as a clutch for disconnecting the drive train from the propulsion motor(s)) does not apply any electromotive force to the propulsion motor(s). Any electromotive force that is applied to the propulsion motor(s) automatically remains in effect unless otherwise specified by the test procedure.

* * * * *

S7.2.4 *Performance requirements.*

* * * * *

(f) An EV with RBS that is part of the service brake system shall meet the performance requirements over the entire normal operating range of the RBS.

* * * * *

S7.4.5 *Performance requirements.*

* * *

S7.4.5.1 An EV with RBS that is part of the service brake system shall meet the performance requirement over the entire normal operating range of the RBS.

* * * * *

S7.7.3. *Test conditions and procedures.*

* * * * *

(h) For an EV, this test is conducted with no electromotive force applied to the vehicle propulsion motor(s), but with brake power or power assist still operating, unless cutting off the propulsion motor(s) also disables those systems.

* * * * *

S7.10 *Partial failure.*

* * * * *

S7.10.3. *Test conditions and procedures.*

* * * * *

(f) Alter the service brake system to produce any single failure. For a hydraulic circuit, this may be any single rupture or leakage type failure, other than a structural failure of a housing that is common to two or more subsystems. For a vehicle in which the brake signal is transmitted electrically between the brake pedal and some or all of the foundation brakes, regardless of the means of actuation of the foundation brakes, this may be any single failure in any circuit that electrically transmits the brake signal. For an EV with RBS that is part of the service brake system, this may be any single failure in the RBS.

* * * * *

S7.10.4 *Performance requirements.* For vehicles manufactured with a split service brake system, in the event of any failure in a single subsystem, as specified in S7.10.3(f), and after activation of the brake system indicator as specified in S5.5.1 of this standard, the remaining portions of the service brake system shall continue to operate and shall stop the vehicle as specified in S7.10.4(a) or S7.10.4(b). For vehicles not manufactured with a split service brake system, in the event of any failure in any component of the service brake system, as specified in S7.10.3(f), and after activation of the brake system indicator as specified in S5.5.1 of this standard, the vehicle shall, by operation of the service brake control, stop 10 times consecutively as specified in S7.10.4(a) or S7.10.4(b).

S7.11.3. *Test conditions and procedures.*

* * * * *

(m) For vehicles with electrically-actuated service brakes (brake power unit), this test is conducted with any single electrical failure in the electrically-actuated service brakes instead of a failure of any other brake power or brake power assist unit, and all other systems intact.

(n) For an EV with RBS that is part of the service brake system, this test is conducted with the RBS disconnected and all other systems intact.

* * * * *

S7.12.2. *Test conditions and procedures.*

* * * * *

(i) For a vehicle equipped with mechanically-applied parking brakes, make a single application of the parking brake control with a force not exceeding the limits specified in S7.12.2(b). For a vehicle using an electrically-activated parking brake, apply the parking brake by activating the parking brake control.

* * * * *

Issued on: September 19, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–23689 Filed 9–25–95; 8:45 am]

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 95–025N]

Comparison of Methods for Achieving the Zero Tolerance Standard for Fecal, Ingesta, and Milk Contamination of Beef Carcasses: Notice of Conference

AGENCY: Food Safety Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) will host a conference to consider ''Achieving the Zero Tolerance Standard for Fecal, Ingesta and Milk Contamination on Beef Carcasses'' on October 23 and 24, 1995, from 8:30 a.m. to 5 p.m., at the United States Department of Agriculture in Washington, DC. The conference will consist of two sessions on consecutive days. At the first day's session, participants will discuss available scientific and technical data comparing the efficacy of the methods for achieving the zero tolerance standard for fecal, ingesta, and milk contamination of beef carcasses. Participants are invited to make presentations regarding this scientific and technical data during this first session. At the second day's session, participants will discuss relevant public policy issues, including public heath, regulatory, and economic issues.

The input provided at this conference will be taken into account by FSIS in deciding whether to approve any methods in addition to trimming for achieving the zero tolerance standard.

ADDRESSES: The conference will be held at the U.S. Department of Agriculture, in the back of the South Building Cafeteria, (between the 2nd and 3rd wings), 14th Street and Independence Avenue, SW., in Washington DC. Persons wishing to make presentations at the first session of the conference are requested to submit in advance brief statements describing the general topics of their presentations. Send descriptions to Dr. William James, Director, Slaughter Inspection Standards and Procedures Division, FSIS, USDA, Room 202 Cotton Annex, 300 12th Street, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: For further information, contact Dr. William James at (202) 720–3219.

SUPPLEMENTARY INFORMATION:

Background

Effective prevention and removal of fecal, ingesta, and milk contamination are among the most important steps companies must take to ensure the safety of beef carcasses. Such contamination may harbor *E. coli* 0157:H7, *Salmonella,* and other enteric pathogenic microorganisms. FSIS has a zero tolerance standard for fecal, ingesta, and milk contamination of beef carcasses, and is continually seeking the most effective, scientifically supportable means of implementing this standard.

The policy of FSIS has been to require the physical removal of all feces, ingesta, and milk from beef carcasses by trimming. Before February 1993, however, ambient temperature washes were sometimes used to remove small flecks of contaminants. Use of ambient temperature water washes for this purpose varied across the country and among inspection personnel. A distinction between flecks of contamination as to their source was not always made, i.e., determinations were not made about whether flecks were fecal contamination or rail dust, and, in some localities, whether they could be removed by washing.

In February 1993, after an outbreak of *E. coli* 0157:H7 in several Western States, FSIS reinforced that trimming was to be the only means of removing feces, ingesta, and milk contamination from beef carcasses. The trim-only policy was based on the judgment that trimming was more effective for removing fecal contamination than alternative approaches. At the time, there were no scientific data available to the Agency comparing the efficacy of trimming and alternative procedures.

Trimming, if performed properly, is an effective means of physically removing from beef carcasses the visible contamination and any accompanying microbial contamination. A primary conceptual advantage of trimming over ambient temperature washing is that it physically removes visibly contaminated tissue (which is more likely to be microbiologically contaminated) rather than relying on a wash to remove bacteria that, depending on the circumstances, may be firmly attached. Also, trimming, when properly performed, is presumed to have less potential than ambient temperature washing for spreading contamination to other parts of the carcass. On the other hand, if trimming is performed incorrectly, it has the potential to cause cross-contamination as the knife moves from areas contaminated with bacteria to newly exposed uncontaminated areas. The effectiveness of trimming also depends on the skill of the operator in visually detecting and effectively removing contamination, while avoiding further contamination by handling the carcass during this process.

Strict enforcement of the policy requiring that trimming be the only means to achieve zero tolerance, following the 1993 *E. coli* 0157:H7 outbreak in the Western States, was also based on the Agency's need to directly and aggressively remove any potential source of pathogenic contamination. FSIS believes that strict enforcement of the trim-only approach was appropriate, based on the information available at the time.

Since 1993, numerous other approaches to removing contamination have been devised and studied to assess their potential as effective alternatives or supplements to carcass trimming to achieve the zero tolerance standard. FSIS is now considering whether to permit the use of some or all of these alternative approaches. The following material reviews current scientific data concerning different approaches to achieving the zero tolerance standard for fecal, ingesta, and milk contamination on beef carcasses, as they would apply under commercial conditions.

Data Review

I. Condition of the Animal on Arrival at the Abattoir

Any discussion of the sources of pathogen contamination on beef carcasses must consider animal husbandry practices and the farm environment (Hancock *et al.,* 1994), the possibility of cross-infection during transport (Gronstol *et al.,* 1974 a, b), and

lairage of the animals before slaughter (Anderson *et al.,* 1961; Grau *et al.,* 1968). The practice of regularly cleaning and disinfecting transport vehicles and holding facilities reduces the level of bacterial contamination in the environment and decreases the risk of pathogens being spread between live animals (ICMSF, 1988).

Soil, feces, and moisture present on the hides and feet/hooves of animals entering the slaughterhouse pose a considerable challenge to hygienic slaughtering practices (Troeger, 1995). Seasonal and geographical factors, together with animal management systems, have a tremendous effect on the cleanliness of live animals presented for slaughter.

Although it would be desirable to exclude grossly contaminated animals from the slaughterhouse, Mackey and Roberts (1991) concluded that such an action could be difficult to rationalize and enforce. Data from Finland, however, indicate that exclusion of cattle carrying excessive loads of soil and manure can be accomplished, with resulting improvements in meat hygiene (Ridell and Korkeala, 1993). As a result of imposing regulations requiring that excessively dirty cattle either be slaughtered at a ''casualty'' abattoir or processed separately at the end of the day using extra care (with any extra costs being incurred by the farmer), the number of ''excessively dungy'' animals presented at slaughter in Finland has decreased dramatically. Exclusion of grossly contaminated cattle is deemed justifiable since such animals yield more highly contaminated carcasses, even when slaughtered with extreme care and using reduced line speeds. Carcasses from ''excessively dungy'' cattle had, on average, 5-fold more microorganisms per cm^2 than carcasses from ''control'' cattle despite the added precautions.

Attempts have been made to clean live animals following arrival at the slaughterhouse. In general, however, these efforts have not been regarded as effective (Empey and Scott, 1939; Roberts, 1980). Though Empey and Scott estimated that a cold water wash reduced the bacterial levels present on cattle by approximately one-half, such treatments have to be applied in such a manner as to restrict later potential microbial growth on a wet hide and reduce practical difficulties associated with handling wet, slippery hides. These investigators also conducted small-scale experiments on the effects of hot water and chlorine on microbial loads of hide-on cattle feet (not live animals). While chlorine showed some potential, application of hot water was thought by the authors to have practical limitations for live animals as water temperatures of 75 to 80°C were necessary to achieve significant microbial inactivation. Animal welfare concerns and the effect on meat and hide quality may complicate or preclude application of such antimicrobial treatments to the live animal.

II. Bacterial Contamination During Slaughter

It is generally agreed that deep muscle tissue of healthy live animals is essentially sterile (Gill, 1979, 1982; Zender, *et al.,* 1958). During slaughter and dressing procedures, the surfaces of livestock carcasses become contaminated with microorganisms. The extent of this contamination varies depending on the condition of the animal upon arrival at the establishment and methods used during slaughter and dressing (Roberts, 1980). Contamination of carcasses is undesirable, but cannot be completely avoided, even under the most hygienic conditions (NRC, 1985; Roberts, 1980; Roberts *et al.,* 1984; Grau, 1987; Dixon *et al.,* 1991).

When meat is produced under hygienic conditions, numbers of pathogens contaminating the surface of the carcass are usually small, and the micro-flora consists primarily of saprophytic bacteria, such as *Pseudomonas.* Results from beef carcasses sampled for pathogens and other bacteria of interest, reported in *Nationwide Beef Microbiological Baseline Data Collection Program: Steers and Heifers,* reflect low numbers of pathogens contaminating the surface of beef carcasses. *Staphylococcus aureus* and *Listeria monocytogenes* were recovered from approximately 4% of 2,000 beef carcasses. *Salmonella* and *Escherichia coli* 0157:H7 were recovered from 1% and 0.2%, respectively, of more than 2,000 beef carcasses. Only 3.6% of the carcasses had coliform counts greater than 100 colony-forming units (CFU)/cm^2 (2.0 logs) and 6.9% of the carcasses had aerobic plate counts of over 10,000 CFU/cm^2 (4.0 logs). Although raw meat containing over 10,000 CFU/cm^2 of non-pathogenic spoilage bacteria does not present a health risk, it is generally considered aesthetically undesirable, has reduced shelf-life, and is often viewed as having been produced unhygienically.

Good hygienic practices during the slaughter and dressing of livestock are critical to safeguard the microbiological safety and quality of meat (Empey and Scott, 1939; Ayres, 1955; ICMSF, 1988). Adherence to good hygienic practices, however, does not preclude the presence of pathogenic bacteria on the final dressed carcass. *Salmonella, E. coli* 0157:H7, *Listeria monocytogenes,* and *Campylobacter jejuni* have all been recovered from hygienically-slaughtered beef carcasses (Stolle, 1981; Weissman and Carpenter, 1969; Chapman *et al.,* 1993; Loncarevic *et al.,* 1994; Stern, 1981; Gill and Harris, 1982).

Feces, ingesta, and milk from infected cows may contain *Salmonella, E. coli* 0157:H7, and other pathogens (Grau *et al.,* 1968; Munroe *et al.,* 1983; Martin *et al.,* 1986). Accidental carcass contamination with feces, ingesta, and milk is thought to be the primary route by which pathogens enter the food chain (Chapman *et al.,* 1993). Removing such visible contamination from carcasses should reduce the risk to consumers but is unlikely to produce pathogen-free carcasses.

Slaughter Floor Contamination

The main direct sources of carcass microbial contamination on the slaughter floor include the animal (especially the hide and feet/hooves), dressing equipment and tools, personnel and their clothing, and the plant environment. Water is sometimes mentioned as a possible source of microorganisms, but this association is largely historical since contemporary abattoirs use exclusively potable water (or reconditioned water of equivalent microbiological quality). Similarly, the contribution of airborne microbes to carcass contamination on the slaughter floor has been mentioned, but Roberts (1980) concluded that, ''air deposits only tens or hundreds of microorganisms per cm^2 per hour, where operatives and equipment carry tens or hundreds of thousands—or even millions.''

Although some microbial contamination of deep-muscle tissues may occur during stunning and bleeding processes when intact skin is broken, thus allowing bacteria to enter the bloodstream, these actions do not generally introduce significant numbers of bacteria (Roberts and Hudson, 1986). The primary source of bacterial contamination of the carcass is generally the hide (Empey and Scott, 1939; Ayres, 1955; Newton *et al.,* 1978; Smeltzer *et al.,* 1980a). During the initial stages of hide and leg removal, microorganisms present on the hide are transferred to subcutaneous tissue by the skinning knife. Additional microbes may be directly transferred to the subcutaneous tissues from the hide when a loose outer flap of the hide contacts the carcass surface during hide pulling (Mackey and Roberts, 1991). Contamination may also be transferred indirectly from the

tools, hands/arms, and clothing of workers (Mackey and Roberts, 1991). A classic example is a worker holding the carcass with an unwashed hand that previously had been in contact with the outer surface of the hide.

Studies have shown that workers handling hide-on beef carcasses are more likely to have a higher incidence and prevalence of salmonellae on their hands than are personnel performing other on-line tasks (Smeltzer *et al.,* 1980b). Similarly, knives and other equipment used for hide removal are more likely to be contaminated with *Salmonella* than are implements used for other operations (Peel and Simmons, 1978; Smeltzer *et al.,* 1980a). Grau (1979) found that *Salmonella* contamination was especially likely to occur when a knife was used to free the rectum and anal sphincter during hide removal. Studies have shown that knife decontamination in hot water is often an inadequate means of inactivating *Salmonella* and other bacteria on the knife surface, usually because of insufficient exposure time (Peel and Simmons, 1978). Greater than 10 seconds exposure was necessary for microbial inactivation when a contaminated knife was dipped in 82°C water. Cross-contamination is reduced when knives and other implements are frequently decontaminated, and hands, arms, and aprons are washed and sanitized regularly (Norval, 1961; Childers *et al.,* 1973; Peel and Simmons, 1978; Roberts, 1980; Smeltzer *et al.,* 1980a and b; de Wit and Kampelmacher, 1982; Grau, 1987).

After the removal of hide, hooves, and head, most subsequent microbial contamination is attributable to the hygienic practices of the workers or technical errors, such as puncturing the animal's gastrointestinal tract (Roberts, 1980). Knives and other equipment used for evisceration are generally less contaminated than tools used for hide and leg removal (Smeltzer *et al.,* 1980a). The incidence of *Salmonella* on beef carcasses, knives, and aprons increases at the stage of evisceration, but to a lesser degree than during hide and leg removal (Stolle, 1981; Smeltzer *et al.,* 1980a). Thorough training and careful evisceration practices (especially closing off the ends of the gastrointestinal tract and removing the intestines from the body cavity) are necessary to prevent carcass contamination with ingesta or feces (Grau, 1987; ICMSF, 1988; Mackey and Roberts, 1991).

Microbiological contamination acquired during the slaughter and dressing process of livestock is not spread evenly over the carcass, and may be expected to vary between sides of the same carcass, between different carcasses processed on the same day at an abattoir, between carcasses produced on different days at an abattoir, and between carcasses produced at different establishments (Empey and Scott, 1939; Kotula *et al.,* 1975; Ingram and Roberts, 1976; Roberts 1980; Johanson *et al.,* 1983). This variability can be due to a number of factors, such as differences in dressing methods, worker skill, application of washing or other carcass treatments, season of the year, and weather.

III. Attachment of Bacteria

The rate of attachment, growth, and multiplication of bacteria on carcasses is dependent on the structure, composition, and water activity of the exposed tissues, the acidity of the surface, the temperature of air and the carcass, the bacterial strain, and various bacterial attachment mechanisms (Lillard, 1985). The skinned ''hot'' beef carcass provides an ideal environment for bacterial survival and multiplication. Surfaces of chilled carcasses, especially those that have experienced significant dehydration, may be less attractive sites for bacterial attachment.

The process by which bacteria attach to meat surfaces is believed to consist of two stages. The first stage is where bacteria are either attached by weak physical forces or freely floating in the water film that covers the meat surface. The second stage is characterized by a stronger attachment mechanism involving, in part, the formation of polysaccharides over time (Firstenberg-Eden, 1981). This consolidation stage is followed by colonization or growth of the microbes on the meat tissue. Once attachment and colonization have occurred, it is very difficult to completely remove pathogenic microorganisms from meat or poultry surfaces by normal processing methods (Benedict *et al.,* 1991).

There is considerable variability among bacteria in their ability to attach to different surfaces. This is likely to be a reflection of the different mechanisms (including pili, flagella, extracellular polymers) used by different bacteria. It has been suggested that bacteria from feces attach more strongly and in higher numbers than the same bacteria grown in laboratory media or meat surfaces (Notermans *et al.,* 1980). Enhanced binding by bacteria present in feces may have to be considered when evaluating the efficacy of carcass decontamination treatments.

It appears that specific bacterial binding sites (receptors) exist on animal cells. Collagen, in particular, seems to be a target for bacterial attachment (Mattila and Frost, 1988; Benedict *et al.,* 1991). Notermans and Kampelmacher (1983) concluded that attachment cannot be completely prevented by manipulating water sprays or baths through the addition of chemicals or manipulating pH. Therefore, the only way to absolutely prevent attachment is to prevent contact between bacteria and meat. While bacteria are still freely floating in the water film, they can be displaced using clean water (Notermans and Kampelmacher, 1983). Measures designed to block attachment should be applied as soon as possible following contamination. Two points on the slaughter line that appear to be likely sites for the application of carcass sprays are following hide removal and following evisceration.

IV. Methods To Decrease Carcass Contamination

In addition to trimming as a means of removing bacteria associated with visible contamination, bacteria are removed from carcasses by several recommended methods, such as rinsing or washing with water (both hot and ambient temperatures), either with or without one of several approved food-grade organic acids (lactic, acetic, or citric) or chemical sanitizers, such as chlorine. Each of these factors is reviewed in the following sections for its relevance to beef carcass decontamination.

A. Water Rinsing

Rinsing a carcass can remove physical contamination (dirt, hair, fecal matter, etc.) to a varying degree, carrying with it some of the resident microorganisms. As indicated above, interventions of this type or others that physically remove bacteria should be used as early as possible after likely introduction of contamination (e.g., after hide removal) to prevent or retard bacterial attachment and growth. Various factors associated with rinsing carcasses can be manipulated, increasing the effectiveness of this approach. Major factors include water temperature, water pressure, line speed, and method of application (Anderson *et al.,* 1979; Crouse *et al.,* 1988). While numerous studies have examined the efficacy of washing techniques, most investigations have been conducted under research conditions, and only a few have directly evaluated effectiveness in production settings.

The use and timing of hot water (95° C) application during processing were investigated by Barkate *et al.* (1993) to determine effectiveness in reducing the numbers of naturally

occurring bacteria on beef carcass surfaces. They found a 1.3 $\log_{10}$ CFU/cm^2 reduction in aerobic plate counts (APCs) for samples sprayed with hot water before the final carcass rinse as compared to a 0.8 $\log_{10}$ CFU/cm^2 reduction in samples sprayed with hot water after the final rinse. The fact that fewer bacteria were removed from the samples sprayed with hot water after the final rinse may have been due to the length of time (approximately 15 to 20 minutes) that elapsed before hot water was applied. In this connection, the authors interpreted Butler *et al.* (1979) as indicating that the time lapse may have allowed more bacteria to become attached and more resistant to the lethal effects of hot water.

Anderson *et al.* (1979) reported that under laboratory conditions, bacterial counts were reduced 1.0 and 2.0 $\log_{10}$ CFU/cm^2 when beef plates were treated with cold (15.6° C) and hot (76–80° C) water, respectively. During subsequent storage at 3.3° C, the time to reach microbial spoilage (108 CFU/cm^2) was 6 days with cold water and 12 days with hot water. The untreated controls took 7 days to reach spoilage levels.

Smith and collaborators (Smith and Graham, 1978; Smith, 1992; and Smith and Davey, 1990, and Smith *et al.*, 1995) have investigated the effectiveness of hot water (140° F) washes versus a more commonly used wash temperature (100° F). Hot water was effective against pathogens such as *E. coli* 0157:H7, *Salmonella, Yersinia enterocolitica,* and *L. monocytogenes.* Quantitative studies assessing the effect of hot water treatment on the survival of *E. coli* 0157:H7 indicated that levels on artificially inoculated carcasses are reduced by 84–99.9% (Smith, 1992; Smith and Davey, 1990; Smith *et al.*, 1995) Other studies have reported reductions in *E. coli* biotype 1 as great as 99–99.9% (Davey and Smith, 1989).

Hot water sprays are most effective when the water film on the carcass surface is raised to 82° C (180° F) for at least 10 seconds. If beef tissue is exposed to this temperature for more than 10 seconds, the surface of the fat and lean tissues can become gray to a depth of about 0.5mm. These carcasses, however, regain their normal color after chilling (Smith and Graham, 1978; Barkate *et al.*, 1993; Patterson, 1969). Carcass bloom, however, is permanently and adversely affected if exposed for 20 seconds to temperatures above 81.4° C–82° C (Davey, 1989, 1990; Barkate *et al.*, 1993). Lower temperatures applied for longer periods of time also have been found (Davey and Smith, 1989) to permanently affect bloom.

Similar results have been reported by investigators worldwide. Patterson (1970) sprayed beef carcasses with steam and hot water at 176–204.8° F (80–96° C) for two minutes, applying in the case of water 18.9 liters to each carcass at a distance of one foot (25cm), to determine the effectiveness of hot water in reducing carcass contamination. Although some discoloration of the carcass occurred initially, cooling for 24 hours restored normal color. Approximately a log reduction in total plate count was observed; however, there was no significant reduction in fecal streptococci. A differential in bacterial counts between treated and untreated carcasses was still evident after 48 hours of refrigerated storage. Smith and Graham (1974) used beef and mutton samples inoculated with *E. coli* to compare the effectiveness of hot water treatment, steam chamber, steam injection, or washing with water at 37° C (91° F) on microbial levels and carcass color changes. Water temperatures below 60° C (140° F) produced no significant color change. As temperatures rose above 85° C (176° F), there was permanent and marked color change. Very high temperatures of 95° C (194° F) for three minutes changed the surface coloration to a depth of no more than 0.5mm below the surface. Temperatures equal to or greater than 70° C (158° F) produced a 2 $\log_{10}$ (99%) reduction of *E. coli.*

Water can be applied to a carcass, by either hand or machine, using washing, spraying, or dipping. Hand and machine washing were compared by Anderson *et al.* (1981). Hand-washed carcasses had reductions of 0.99 $\log_{10}$ CFU/cm^2, while an experimental beef carcass washing unit yielded a 1.07 $\log_{10}$ CFU/cm^2 reduction, a non-significant difference.

The angle of water impact has been shown to be an important factor in bacterial removal. When water pressure is normal, a 30° angle is more effective at removing bacteria than a 90° angle (Anderson 1975). When line pressure is increased, the angle degree is less important.

Since bacterial attachment affects the ease of removing bacteria, the point during slaughter and dressing at which water is applied has been deemed significant in retarding or inhibiting attachment. Notermans *et al* (1980) concluded that control of *Enterobacteriaceae* and *salmonellae* was more effective when carcasses were spray-cleaned with water at multiple stages during evisceration than when washing occurred only after evisceration.

Water pressure can influence the effectiveness of carcass washing treatments. De Zuniga *et al* (1991) investigated the effect of increased water pressure on the penetration of bacteria into tissue using Blue Lake dye. As the pressure of the water increased, the dye penetrated to a correspondingly greater depth in the tissue. They recommended an optimal water pressure for washing beef carcasses between 100 psi to 300 psi. They cautioned that higher pressures may drive the organisms deeper into the tissues, while pressures less that 100 psi were less effective at reducing bacterial counts. Kotula (1974) found that water containing 200 ppm chlorine, sprayed at a pressure of 355 psi and at temperatures ranging from 55–125° F, effectively removed bacteria from market beef forequarters. Kotula *et al.* (1974) concluded that water pressure was a more important variable than pH or water temperature for removing bacteria by spray washing. These beef samples, however, were not freshly slaughtered, and may have required more intense pressures. Jerico *et al.* (1995), concluded that washing beef carcasses with water at 200–400 psi at 38°C (100.4°F) did not significantly change the level of bacteria on the carcass. They noted that other investigators (Anderson, 1981; Kotula *et al.*, 1974; Crouse *et al.*, 1988) did not statistically validate the sample size to adjust for variation in counts and sample size, and did not collect samples immediately after washing.

Increasing water pressures has been found to have certain operational disadvantages. For example, greater pumping pressure is required, thus requiring more energy and special equipment, less heat energy can be recovered from the outlet water steam, and the nozzle is more likely to become blocked if water is recirculated (Graham *et al.*, 1978).

B. Beef Carcass Trimming vs. Washing Treatment Studies

Only three studies directly compare hand trimming vs. washing as methods to remove fecal and bacterial contamination from beef carcasses. Hardin *et al.* (1995) conducted an FSIS-supported research project designed to compare traditional hand trimming procedures to washing of beef carcasses for removal of feces and associated bacteria. Paired cuts from four carcass regions (inside round, outside round, brisket, and clod) were removed from hot, split carcasses, then contaminated with a fecal suspension containing either *E. coli* 0157:H7 or *S. typhimurium* (10^6 CFU/ml). Inoculated meat cuts

(400 cm^2 area) were treated by one of four treatments either immediately or 20–30 min post-contamination. One paired contaminated surface region from each carcass side was trimmed of all visible fecal contamination. The remaining paired carcass surface region was then washed either with water (35°C/95°F), water wash with 2% lactic acid (55°C/131°F), or water wash with 2% acetic acid (55°C/131°F). Samples for microbiological analyses were collected pre- and post-treatment from within and outside the defined area contaminated with the fecal suspension.

All treatments significantly reduced levels of pathogens; however, decontamination was affected by carcass surface region. The inside round region was the most difficult carcass surface to decontaminate, regardless of treatment. Washing followed by organic acid treatment performed better than trimming or washing alone on all carcass region surfaces except the inside round, where organic acid treatments and trimming performed equally well. Overall, 2% V/V lactic acid reduced levels of *E. coli* 0157:H7 significantly better than 2% V/V acetic acid; however, differences between the abilities of the acids to reduce *Salmonella* were less pronounced. All treatments caused minimal spread of pathogens outside the initial area of fecal contamination. Recovery after spreading was reduced by the use of organic acid treatments.

This study is limited in relation to evaluating commercial conditions due to the experimental design, which deliberately added inoculated feces to the carcass. A rather large area (400 cm^2) was inoculated and deliberate placement on the meat surface allowed the trimmer to know exactly where fecal contamination occurred. Under commercial situations, fecal contamination must first be visually located and the borders of contamination subjectively evaluated. This subjectiveness may allow the trimmer to inadvertently touch the knife to areas of fecal contamination that are not obviously visible, thereby cross-contaminating the freshly trimmed areas as the knife blade is drawn across. Knife trimming was highly controlled in these experiments, whereas knife trimming under commercial conditions might be expected to yield more variable results. Secondly, although this study was performed in an abattoir, the treatments were performed in an adjacent laboratory setting rather than on a slaughter line where deliberate inoculation of carcasses with pathogens is not allowed by FSIS.

The second direct comparison of trimming vs. washing involved work performed by scientists from four universities. This study was conducted in four phases, and is commonly referred to as the National Livestock and Meat Board study, for the organization that funded the project.

Phase I trials sought to define the proper parameters for the washing experiments (Gorman *et al.*, 1995, submitted for publication; Smith *et al.*, 1995, submitted for publication; Smith, 1995). Results of Phase I suggested that higher pressures of 20.68 bar (300 psi) and 27.58 bar (400 psi) during spray-washing were more effective ($P<0.05$) than lower pressures of 2.76 bar (40 psi) or 13.79 bar (200 psi) bar for removal of fecal material and for reducing bacterial numbers. Phase II compared the efficacy of hand-trimming and six potential carcass decontamination treatments: hot water (74°C), ozone, trisodium phosphate, acetic acid, hydrogen peroxide, and a commercial sanitizer (Smith, 1995; Gorman *et al.*, submitted for publication).

Data from Phase II revealed that application of hot water (74°C at the meat surface) for spray-washing reduced total plate counts and *E. coli* (ATCC 11370) counts exceeding 3.0 $\log_{10}$ CFU/cm^2. The best combination and sequence of interventions for reducing bacteria counts on beef brisket samples were: (a) Use 74°C water in the first wash with water pressure at 20.68 bar, and (b) if colder (<35°C) water is used in the first wash, spray-wash with hydrogen peroxide or ozone in the second wash. Trimming alone or trimming followed by a single spray-washing treatment of plain water (16–74°C; 20.68 bar; 12 or 36 sec) significantly ($P<0.05$) reduced the microbiological counts compared to the untreated, inoculated control. Trimming alone decreased total aerobic plate counts by 2.5 CFU/cm^2 and trimming with plain water (<35°C) wash decreased total aerobic plate counts by 1.44–2.3 CFU/cm^2. These data indicated that trimming reduces microbiological contamination after carcasses are contaminated with fecal material but a significant amount of contamination remained on samples after trimming or trimming with spray washing. It was concluded that washing at 300 psi was as effective as trimming and washing combinations for reducing bacterial counts on the tissues. When water was 74°C, reductions were greater than 3.0 log CFU/cm^2, irrespective of the presence or absence of chemical sanitizer.

Spray-washing with hot water resulted in less variability in bacterial counts obtained after treatment compared to hand-trimming and/or spray-washing with water of lower temperatures. The authors concluded that this greater variability in bacterial counts for hand-trimming treatments indicated the potential for cross-contamination during the process.

Phase IIIA consisted of field studies in six commercial plants and concluded that: (a) Compared to inoculated controls (no trim; no wash), every combination of washing—with or without trimming and with and without chemical agents—lowered ($P<0.05$) total plate counts and *E. coli* counts; (b) compared to the treatment combining trimming plus washing, washing (without trimming) with 74°C water achieved ($P<0.05$) equal reductions in total plate counts and *E. coli* counts; and, (c) washing (without trimming) with 74°C water—based upon comparative standard deviations—achieved more consistent lowering of total plate counts and of *E. coli* counts than did trimming plus washing (Smith, 1995).

Phase IIIB further investigated the effects of hot water washing under commercial slaughter conditions, as the hot water washing trials in Phase III were conducted in only two of the six plants, the number of samples was small, and the parameters of hot water application (temperature, pressure, etc.,) were not consistent (Smith, 1995). The results of Phase IIIB were consistent with Phase IIIA in demonstrating that trimming and washing are effective in reducing the microbial loads on carcasses. Of the several treatments tested, however, the most effective in reducing microbial numbers was combined trimming, washing, and rinsing with hot water for 8 seconds. Other treatments tested included: control (no trimming, no washing), trimming/washing (current ''zero tolerance'' procedure), no trimming/hot water rinse for 2.5 seconds, and no trimming/hot water rinse for 8 seconds.

The use of hot water alone (no trimming) in this study effectively reduced the microbial contamination on carcasses, but the average reduction in counts was slightly less than that achieved by trimming and washing or trimming and washing combined with hot water rinsing. These findings suggest that the application of hot water at 20 pounds per square inch (psi) for 2.5 or 8 seconds is not as effective as the hot water washing system used in Phase IIIA of the studies, i.e., the application of a fine spray at psi's ranging from 150 to 260 and temperatures of 60°C to 75°C (140°F to 175°F).

The third study that evaluated the effectiveness of carcass trimming and/or washing on the microbiological quality of beef carcasses in a commercial slaughter plant was conducted by Prasai *et al.* (1995). The inside rounds of 48 beef carcass sides were evaluated using four treatments: (1) Untreated (no trim, no wash), (2) trim alone, (3) trim plus wash, or (4) wash alone. Samples for aerobic plate counts, *E. coli*, and coliform counts were collected post treatment. Significant differences ($P < 0.05$) were observed in aerobic plate counts (APC) when treatments were compared to controls. *E. coli* and coliform counts were too low to show statistical significance between treatments; however, the mean *E. coli* and coliform counts were higher in control samples ($P < 0.05$) than in other treatments. The greatest reduction in APC counts were observed in trimmed samples (3.0 log CFU reduction vs. control), followed by trim and wash (0.9 log CFU reduction vs. control), and wash alone (0.3 log CFU reduction vs control) samples. Samples receiving trim and wash treatments had APC counts approximately 2 logs higher than trimmed samples, suggesting that washing spreads bacterial contamination. All washed samples, however, had mean reductions of 0.3–0.9 log CFU vs. control samples. The investigators concluded that trimming can be effective in reducing bacterial contamination during slaughter and that additional bacterial reductions can be obtained if trimming instruments are sanitized between trim sites. The authors further concluded, however, that the type of trimming used in the study—i.e., use of sterile instruments and trimming of entire sample surface—is unlikely on a typical slaughter line, and that, under commercial conditions, a combination of trimming and washing could be practical and effective.

C. Organic Acid Sprays

Organic acids, such as lactic, acetic, and citric, reduce pathogenic and spoilage microbial organism populations by altering the environmental pH and by direct bactericidal action (Osthold, 1984). The immediate effect of organic acids on bacteria is to reduce numbers approximately one $\log_{10}$ when the initial aerobic plate count (APC) is less than or equal to 104 CFU/cm^2. A few investigators have reported a two or three log reduction (Snijders, 1979; Smulders and Woolthius, 1983; Netten, 1984). Overall, the available scientific data indicate that treating carcasses with an organic acid rinse, spray, or dip can achieve a 90–99.9% (1–3 log10) reduction in the level of spoilage organisms such as *Pseudomonas fluorescens* (Dickson and Anderson, 1992; Prasai *et al.*, 1991; Frederick *et al.*, 1994). Decontaminating carcasses with lactic or acetic acid can extend the shelf life of treated product (Smulders and Woolthuis, 1985; Woolthius and Smulders, 1985). In addition, organic acid sprays and dips have been shown to decrease the levels of specific pathogens, such as *Salmonella* spp., *Staphylococcus aureus*, *C. jejuni*, Yersinia enterocolitica, and *L. monocytogenes* (Osthold *et al.*, 1984; Bell, *et al.*, 1986; Smulders, *et al.*, 1986; Anderson, *et al.*, 1987; Siragusa and Dickson, 1992; and Cutter and Siragusa, 1994). Reductions in the number of pathogenic bacteria on carcasses reduce the risk of food-borne disease.

Each organic acid differs in its ability to reduce the bacterial population on tissue surfaces. The concentration of the organic acid affects not only bacterial survival, but also the color and odor of the meat, especially if the concentration is 2% or greater. Bleaching and discoloration of tissue have been reported, and may occur at 1% concentrations for lactic and acetic acid (Smulders and Woolthuis, 1985, and Hamby *et al.*, 1987). Balancing antimicrobial activity with organoleptic impact, the practical concentration for use of lactic or acetic acids appears to be 0.5 to 2.5%.

Prasai *et al.* (1991) examined the effect of lactic acid (1.5%, 55°C) applied to beef carcasses at various locations in processing and found that the greatest reduction in APCs occurred on carcasses treated immediately after hide removal and again after evisceration. These reductions, however, were not significantly better than spraying only after evisceration. After 72 hours of storage (1°C), the number of bacteria per cm^2 on treated carcasses was lower than on comparable control carcasses. Decontamination with acids is more effective when employed as soon after slaughter as feasible (Acuff *et al.*, 1987) and at elevated temperatures (53–55°C).

Treating beef carcasses with acids does not completely inactivate all pathogens, particularly *E. coli* 0157:H7, which is relatively acid tolerant. Cutter and Siragusa (1992) reported that there are differences among *E. coli* 0157:H7 isolates in relation to their acid tolerances. *Salmonella* spp., *L. monocytogenes*, and *Pseudomonas fluorescens* are more sensitive to acids than *E. coli* 0157:H7 (Dickson, 1991; Greer and Dilts, 1992; Cutter and Siragusa, 1994; Bell et al., 1986); while *E. coli* biotype 1, particularly *E. coli* 01257:H7, appears to be among the more resistant enteric bacteria to the effects of organic acids (Woolthuis *et al.*, 1984; Woolthuis and Smulders, 1985; Van Der Marel *et al.*, 1988; Bell *et al.*, 1986; Anderson and Marshall, 1990, 1989; Acuff *et al.*, 1994).

The extent of reduction of *E. coli* 0157:H7 achieved has varied among studies. For example, Dickson (1991) found that the reduction of *E. coli* 0157:H7 was similar to that observed for *Salmonella* and *L. monocytogenes*, with up to a 99.9% reduction in the levels of all three bacteria from inoculated tissues. A number of other studies have reported reductions in *E. coli* and in *Enterobacteriaceae* (which belongs to the same family as *E. coli*) of 46 to 99.9% on tissues treated with 1.2% to 2% acid (Bell *et al.*, 1986; Anderson and Marshall, 1990, 1989; Cutter and Siragusa, 1994; Greer and Dilts, 1992; Acuff *et al.*, 1994). Anderson and Marshall (1990) found that although lactic acid exerted a significant antimicrobial effect on some *Enterobacteriaceae*, it did not appreciably affect *E. coli* or *S. typhimurium* on beef issue samples. Conversely, Brackett *et al.* (1993) reported that up to 1.5% acid treatments did not appreciably reduce *E. coli* 0157:H7, whether at 20C or 55C, and was ''of little value in disinfecting beef of EC 0157.'' Dickson (1991) concluded that an acetic acid carcass sanitizer could be used as an effective method to control bacterial pathogens. Cutter and Siragusa (1992) reported that the reduction of *E. coli* 0157:H7 on meat by acid treatment is dependent on acid concentration (5% giving the greatest reduction) and tissue type (greater reduction on fat tissue than lean). They found lactic acid to be more effective than acetic or citric acid against *E. coli*. This has been reported by Hardin *et al.*, 1995, as well. Cutter and Siragusa (1992) suggested that the two primary determinants of effectiveness are the pH achieved at the surface of the carcass and the corresponding period of exposure.

A number of other studies have reported reductions in *E. coli* or *Enterobacteriaceae* ranging from 46 to 99.9% on tissues treated with 1.2% to 2% acid (Bell *et al.* 1986; Anderson and Marshall, 1990, 1989; Cutter and Siragusa, 1994; Greer and Dilts, 1992; Hardin *et al.*, 1995). Anderson and Marshall (1990) found that concentration and temperature of lactic acid solutions had significant but independent effects on reduction in numbers of inoculated microorganisms (aerobes, *Enterobacteriaceae*, and *E. coli*) on the surface of lean beef muscle. *E. coli* cells, however, were

comparatively resistant to the effects of temperature and concentration of lactic acid. Further, Brackett *et al.* (1993) reported that up to 1.5% acid treatments did not appreciably reduce *E. coli* 0157:H7, whether at 20° or 55°C and ''was of little value in disinfecting beef of EC O157.'' Brackett (1994) also concluded that *E. coli* (Biotype I) and *E. coli* 0157:H7 are quite resistant to the effects of organic acids, particularly lactic acid. Hardin *et al.* (1995) observed that *E. coli* 0157:H7 was more resistant than *S. typhimurium* to the effects of both 2% lactic and 2% acetic acid applied to beef carcass surface regions. Reductions in levels of *E. coli* 0157:H7 were 0.6–1.5 $\log_{10}$ CFU/cm^2 greater with lactic acid than acetic acid, depending on the carcass surface tested. Both lactic and acetic acid, however, were equally effective in reducing levels of *S. typhimurium*.

Both acid concentration and temperature have been studied for their effects on reducing bacterial numbers on beef tissue. Anderson and Marshall (1989) observed that both concentration and temperature produced significant, but independent, reductions in numbers of *E. coli* and *S. typhimurium* on beef semitendinosus muscle dipped in an acetic acid solution. Acid concentration (1, 2, 3%) was found to be insignificant at the higher temperature (70°C), but caused significant reduction in numbers of microorganisms at lower temperatures (22, 40, and 55°C). Anderson and Marshall (1989) reported that the most effective treatment was dipping pieces of lean meat in 3% acetic acid at 70°C. They suggested that some direct effects from heat may have contributed to the increased reduction of bacterial numbers in samples treated at this higher temperature. The numbers of surviving organisms were reduced as the temperature of the acid was increased from 25 to 70°C, with acid concentration being less significant at higher temperatures. These researchers later reported similar results for treatments using 3% lactic acid at 70°C (Anderson and Marshall, 1990). Anderson *et al.* (1987) observed a greater reduction in levels of indigenous *E. coli, Enterobacteriaceae* and APC with hot (52°C) acetic acid when compared to cool (14.4°C) acetic acid.

In a more recent study, Anderson *et al.* (1992) reported an increased removal of bacteria as either the concentration or temperature of the acid solution was increased, with the acids performing differently at different temperatures. Lactic acid was reported to be significantly more effective than acetic acid for all bacterial types (aerobes, *Enterobacteriaceae, S. typhimurium, E. coli*) at both 20 and 45°C, and more effective on *S. typhimurium* at 70°C. Cutter and Siragusa (1994) reported that of three concentrations evaluated (1, 3, and 5%), 5% acid (acetic, lactic, or citric) resulted in the greatest reduction in numbers of both *E. coli* 0157:H7 and *P. fluorescens* from beef carcass tissue.

Evaluation of the overall effectiveness of organic acids is confounded by the fact that the various studies have employed different acid types, applied at different concentrations and temperatures to varying types of meat tissue surfaces. Each of these factors has an effect on the removal of bacteria from carcasses. Several studies have evaluated the effect of tissue type (fat and lean) on the effectiveness of organic acids to reduce the number of bacterial cells from beef tissue surfaces. Cutter and Siragusa (1994) reported that the magnitude of bacterial reductions from beef surfaces treated with organic acids was consistently greater when spray treatments were applied to bacteria attached to adipose tissue. Log reductions for *E. coli* 0157:H7 and *P. fluorescens* were 1 and 2 $\log_{10}$ greater on adipose vs. lean beef carcass tissue. These findings agree with Dickson and Anderson (1991), who reported significant reductions in *S. california* from use of distilled water and 2% acetic acid with beef fat tissue, whereas no significant differences were observed between treated and untreated lean tissues. Dickson (1991, 1992) reported similar findings for *S. typhimurium, L. monocytogenes,* and *E. coli* 0157:H7 attached to fat surfaces of beef trim. Acid treatment resulted in an immediate sublethal injury of approximately 65% of *S. typhimurium* (Dickson, 1992) remaining on lean and fat tissue. A residual effect from the acid was observed with the fat tissue, resulting in an additional 1 $\log^{10}$ decrease over four hours. The author suggested that the differences observed in the effects of acid for lean and fat tissue were due to the increased water content of lean tissue and the presence of water-soluble components that may neutralize the acid and its effect on the bacterial cell. In a comparison of methods for the removal of *S. typhimurium* and *E. coli* 0157:H7 from various beef carcass surfaces, Hardin *et al.* (1995) found a significant difference in the type of surface evaluated. The researchers observed that the inside round was the most difficult carcass surface to decontaminate and attributed this to a substantial amount of exposed lean on the meat surface, as well as a pronounced collar of fat at the edge of the lean.

Organic acids have been reported to be more effective in reducing bacterial levels when applied during, or shortly after, slaughter and dressing. Acuff *et al.* (1987) and Dixon *et al.* (1987) reported no significant difference in reduction of aerobic populations from beef steaks and subprimals treated post-fabrication with various organic acids and their controls. They suggested that the application of acid decontamination would be most effective as soon as possible after slaughter, before bacteria have had a chance to attach firmly to meat surfaces. This was supported by Brackett *et al.* (1994), who recently reported that hot acid sprays were ineffective in reducing levels of *E. coli* 0157:H7 inoculated onto the surface of sirloin tips purchased from local butchers. Snijders *et al.* (1985) reported an increase in the bactericidal effect of lactic acid sprayed on hot carcasses (45 minutes postmortem) when compared to spraying on chilled carcasses. They suggested that on hot carcass surfaces, increased reductions may be due to higher levels of bacteria present in the water film and not yet attached to the carcass surface. Van Netten *et al.* (1994) described an *in vitro* model to evaluate the inactivation kinetics of bacteria from meat surfaces treated with lactic acid. A rapid reduction in bacterial numbers due to the replacement of the fluid (water film) on a warm meat surface by a film containing lactic acid was referred to as ''immediate lethality.'' They proposed that organisms on chilled meat are less accessible to lactic acid and are better protected by meat buffering effects than those in the fluid film of hot meat surfaces.

D. Chlorine and Chlorine Compounds

Chlorine, chlorine dioxide, sodium hypochlorite, and hypochlorous acid all have been sprayed onto beef carcasses in an effort to reduce microbial populations.

Chlorine and chlorine dioxide were compared for chickens by Lillard (1979) to determine their relative bactericidal effect. Chlorine dioxide was found to be more potent than chlorine and required only one-seventh as much to produce the same bactericidal effect. Further, chlorine dioxide maintained its effectiveness when both pH and the level of organic matter increased. Chlorine is less effective when the pH or organic load is increased. Kotula *et al.* (1974) treated beef forequarters with chlorinated water (200 ppm) and found initial reductions (45 min post-treatment) in APCs for duplicate testing days of 1.5 and 2.3 $\log_{10}$ CFU/cm^2, respectively. Temperature (12.8 vs 51.7°C) and pH (4 to 7) were found to

significantly affect efficacy, with the greatest reductions observed at a temperature of 51.7° and pH values of 6 and 7.

Anderson *et al.,* (1979) compared the effectiveness of several treatments to reduce APCs on previously frozen beef plate stripes. Meat was washed and sanitized with cold water (15.6°C [60°F]), hot water (76–80°C [168–176°F]) (14kg/cm^2), sodium hypochlorite (200–250µg/ml), or acetic acid (3%)—all at 14kg/cm^2; and at 17 kg/cm^2 steam at 95°C (194°F). They found that the sodium hypochlorite and cold water treatments reduced counts by about one log. Steam reduced the count by only 0.06 log. Hot water reduced counts by 2.0 log and acetic acid reduced counts by 1.5 log. Over time, samples treated with hypochlorite had rates of bacterial re-growth that exceeded those of the untreated controls. Steam and cold water treated samples exceeded APCs on controls after five days, presumably due to greater surface moisture from the treatment. Growth rates associated with the hot water samples were similar to the untreated controls, but, because of the initial 2.0 log reduction in microbial levels, it took nearly five additional days before counts reached 10^8/cm^2. Acetic acid, applied to samples after a cold water wash, provided a 14–16 day delay before counts returned to initial levels, and it took a full 23–24 days before the bacteria reached 10^8/cm^2.

V. Other Technologies

Several other approaches or technologies have been suggested as additional alternative means for decontaminating beef carcasses, such as rinsing with trisodium phosphate (TSP), steam pasteurization of carcasses, steam vacuuming, and chemical dehairing. These approaches have not been as extensively investigated and reported in the scientific literature to date, relative to their use with beef carcasses. A brief discussion of each method follows.

A. Trisodium Phosphate

Trisodium phosphate (TSP) has been shown to reduce *Salmonella* on processed poultry carcasses. In a 1991 patent, Bender and Brotsky presented the claim that trisodium phosphate (Na_3PO_4) could successfully reduce *Salmonella* on processed poultry carcasses. Since then, industry, university, and USDA Agricultural Research Service researchers have conducted studies that demonstrate reductions in *Salmonella* levels on poultry carcasses ranging from 90 to greater than 99.9% (1.2 to 8.3 $\log_{10}$). Dickson *et al.* (1994) studied the effect of TSP on beef tissue dipped in TSP after inoculation with both Gram positive (*L. monocytogenes*) and Gram negative (*S. typhimurium* and *E. coli* 0157:H7) pathogens. They reported reductions of 1 to 1.5 $\log_{10}$ for the Gram-negative pathogens, and a maximum reduction of less than one $\log_{10}$ for *L. monocytogenes* on lean tissue. Reduction of *L. monocytogenes* was greater on fat tissue: 1.2 to 1.5 $\log_{10}$. A reduction of 2 to 2.5 $\log_{10}$ for *S. typhimurium* and *E. coli* 0157:H7 on fat tissue was reported.

In-plant testing of TSP on beef carcasses (Rhone-Poulenc) showed a greater than 1.5 $\log_{10}$ reduction of *E. coli* (biotype I). Further, they found that incidence rates for *E. coli* fell from 51.3% on untreated carcasses to 1.3% on TSP-treated carcasses. The level of *Enterobacteriaceae* was reduced by one $\log_{10}$, and the incidence rates fell from 75% on untreated carcasses to 8.8% on treated carcasses. *Salmonella* was not detected on any carcasses.

B. Steam Pasteurization

A patent-pending process developed by Frigoscandia for steam pasteurization of meat and poultry has been tested at Kansas State University and has received approval by FSIS for in-plant evaluation; the process is applied at the end of beef dressing operations on inspected and passed carcasses. A request by Frigoscandia to evaluate and test the process as an antimicrobial reduction intervention is being considered by FSIS.

Tests of a prototype unit at Kansas State University showed that the process consistently reduces pathogenic bacteria, including *E. coli* 0157:H7, by 99.9% (Frigoscandia, 1995). The process uses pressurized steam applied uniformly to the entire carcass surface, producing surface meat temperatures of 77–93°C (170–200°F) and a uniform bacterial reduction on the entire carcass. Since the steam reaches all exposed surfaces, the reduction is more uniform and operator-independent. The process is reported to not affect the color of the carcass, and to use less energy than is required for a comparable hot water system. Furthermore, the use of a 2% lactic acid cooling spray immediately after steam application appeared to act synergistically to inactivate surface bacteria. It should be noted that the intended use of the steam pasteurization is not the direct physical removal of visible contamination, but the technology has the potential to be integrated into pathogen control systems to enhance their effectiveness.

C. Steam Vacuuming

Alternative methods for removing beef carcass contamination such as air jets and vacuum systems (without steam) have been shown to be effective in removing visible as well as microbiological contamination (Monfort, 1994). Steam vacuuming is a refinement of this approach, combining physical removal with microbial inactivation. Steam vacuuming is a process in which steam and hot water are applied through nozzles to the carcass surface after the hide is removed. This appears to be particularly useful for opening cuts, which are made in the hide to facilitate hide removal. These carcass surfaces tend to be contaminated more frequently than other areas of the carcass. Steam vacuuming treats these surface areas with hot water (above 160°F) and steam while vacuuming the removed contamination and any excess water from the surface. The process of steaming the opening patterns encountered some difficulty in early trials when the steam nozzle was held 6 to 12 inches from the surface. There was a rapid drop in temperature, and as a result no significant differences in bacterial levels were noted from treated areas. These problems were corrected by adjusting the equipment and placing the head of the vacuum directly on the surface. Testing at Kansas State University has shown the effectiveness (>99.9% reduction) of steam vacuuming in decontaminating prerigor meat surfaces that have been inoculated (approximately 10^5 CFU/cm^2) with the pathogens *L. monocytogenes*, *E. coli* 0157:H7, and *S. typhimurium*. Scientists at the U.S. Meat Research Center of USDA's Agricultural Research Service at Clay Center, Nebraska have reported a 3.0 to 3.5 log (>99.9%) reduction in bacteria on steam vacuum-treated meat. Preliminary results from an ongoing industry study (ten plants reported to date) comparing steam vacuuming and knife trimming to remove carcass contamination indicate that carcasses that have been steam vacuumed have approximately 90% (0.94 log) less bacteria than trimmed carcasses in the areas tested. Several inplant trials comparing steam vacuuming versus traditional trimming are currently underway.

D. Chemical Dehairing

The effects of post-exsanguination (post-bleeding) dehairing on the microbial load and visual cleanliness of beef carcasses has been studied by Schnell *et al.,* 1995. Ten grain-fed steers/heifers were slaughtered and

dressed without dehairing. The carcasses of these animals were evaluated for bacterial contamination and visual defects (hair and specks) and for weight of trimmings made to meet ''zero tolerance.'' Overall, no difference was reported in aerobic plate counts, total coliform counts, and *E. coli* counts between samples from dehaired cattle and those from conventionally-slaughtered cattle. The lack of difference in bacterial counts was thought to be due to contamination in the facility from aerosols, and from people and equipment contaminated by conventionally-slaughtered cattle. An interaction was noted, however, between treatment and carcass sampling location. *E. coli* counts were lower in samples taken from rounds of dehaired carcasses than in samples from rounds of conventionally-slaughtered carcasses. The converse was found for samples from briskets, where higher counts were thought to be due to the additional handling of dehaired carcasses, i.e., the necessity of cutting the hide to assist in removal of hides that had become soapy and slippery during the dehairing process.

The investigators stated the opinion that the microbiological status of carcasses from dehaired animals should improve in facilities designed to produce only dehaired carcasses. Dehaired carcasses had fewer visible specks and fewer total carcass defects before trimming (but not after trimming) than did conventionally-skinned carcasses. The average amount of trimmings removed from conventional carcasses to meet the ''zero tolerance'' specification was almost double (2.7 versus 1.4 kg) that from dehaired carcasses.

Additional tests, conducted in support of an industry petition (Monfort, 1995), compared the reduction of bacteria from hide to dehaired hide immediately after the dehairing process. These tests found a 99% reduction in total plate counts.

VI. The Conference

FSIS is committed to ensuring that the most effective means available are used to achieve the zero tolerance standard for fecal, ingesta, and milk contamination of beef carcasses. The Agency's goals are to protect consumers from harmful contamination and thus reduce their risk of contracting foodborne illnesses. Given the importance of these goals, determining the most effective means of implementing the zero tolerance performance standard is one of FSIS's highest priorities. FSIS will act on the basis of sound scientific evidence, discussed in an open public process, to improve the safety of beef products through effective removal of fecal and associated microbial contamination.

Accordingly, FSIS is hosting a conference to review the scientific and technical data and associated public policy issues involved in achieving the zero tolerance standard and improving beef carcass microbial safety. The conference will consist of two sessions on consecutive days. At the first session, participants will discuss available scientific and technical data comparing the efficacy of various methods for decontaminating beef carcass surfaces, focusing on the research summarized above. Participants are invited to make 15-minute presentations during this first session and are requested to submit to FSIS, in advance, brief statements describing the general topics of their presentations (see **ADDRESSES** above). A panel of government scientists and managers will participate in this session and facilitate the discussion; the panel will be moderated by Ms. Patricia F. Stolfa, Acting Deputy Administrator, Science and Technology, FSIS. An opportunity will be provided for open discussion of scientific issues among all participants. Possible scientific and technical questions for discussion are:

1. Do the studies offered to support the various decontamination alternatives conform to appropriate scientific standards?

2. Are key results from individual studies reproducible and have they been replicated in other experiments?

3. How effective is any specific treatment against microbial pathogens, and against *E. coli* 0157:H7 in particular?

4. Is a specific treatment bactericidal or bacteristatic?

5. Has a treatment been studied under plant conditions?

6. What are the most effective locations for treatment on the carcass and on the slaughter line?

7. If water is used, in what amounts? Can water be conserved or reused?

8. Is there any threat to workers or the environment from residual treatment fluids, chemical waste, or biological hazards?

9. Does a proposed treatment create an insanitary condition?

10. Does a proposed treatment spread contamination on a carcass or spread contamination from carcass to carcass?

11. Can - and should - a treatment be combined with other treatments? What would be the optimum combination?

12. Does a proposed treatment interfere with current inspection procedures?

13. When all the relevant studies are considered, does a discernible trend emerge supporting a policy choice?

During the second session, participants will discuss the public policy issues surrounding beef carcass decontamination. This session will be moderated by Thomas J. Billy, Associate Administrator, FSIS, and Dr. Craig Reed, Deputy Administrator, Inspection Operations, FSIS. Possible policy questions for discussion are:

1. What criteria should be used to decide that an alternative approach meets the zero tolerance performance standard for visible fecal contamination and associated microbial contaminants?

2. What amount and quality of scientific data should be required in order to change current policy?

3. Are alternative approaches equally feasible for all establishments that may want to use them?

4. Should FSIS prescribe exactly how fecal contamination may be removed or should there be an organoleptic and microbial performance standard that companies can achieve as they see fit?

5. What techniques should the FSIS inspection force use to verify that an alternative approach is functioning effectively?

6. Should preventive measures be made part of this policy decision?

7. What approaches to achieving the zero tolerance performance standard are consistent with a HACCP approach to process control? Conference Registration

FSIS is requesting that persons planning to attend the conference preregister. If you plan to attend, please contact Ms. Mary Gioglio at (202) 501–7138 to register. Registration will also be available on the days of the conference on a space-available basis.

Also, if you require a sign language interpreter or other special accommodations, please contact Mary Gioglio at the number listed above.

Done at Washington, DC on September 20, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

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[FR Doc. 95–23798 Filed 9–21–95; 12:50 pm]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 772]

Grant of Authority For Subzone Status; Fina Oil Company (Oil Refinery), Jefferson County, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

WHEREAS, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

WHEREAS, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

WHEREAS, an application from the Foreign-Trade Zone of Southeast Texas, Inc., grantee of Foreign-Trade Zone 116, for authority to establish special-purpose subzone status at the oil refinery complex of Fina Oil Company, in Jefferson County (Port Arthur area), Texas, was filed by the Board on December 13, 1994, and notice inviting public comment was given in the Federal Register (FTZ Docket 40–94, 59 FR 65752, 12–21–94); and,

WHEREAS, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

NOW, THEREFORE, the Board hereby authorizes the establishment of a subzone (Subzone 116B) at the Fina Oil Company refinery complex, in Jefferson County, Texas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);

—products for export; and,

—products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 18th day of September 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration; Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–23888 Filed 9–25–95; 8:45 am]

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[Order No. 773]

Grant of Authority for Subzone Status; Marathon Oil Company (Oil Refinery) Garyville, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the South Louisiana Port Commission, grantee of Foreign-Trade Zone 124, for authority to establish special-purpose subzone status at the oil refinery complex of Marathon Oil Company, in Garyville, Louisiana, was filed by the Board on January 9, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 1–95, 60 FR 4589, 1–24–95); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 124E) at the Marathon Oil Company refinery complex, in Garyville, Louisiana, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);
—products for export; and,
—products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 18th day of September 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–23889 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[C–201–505]

Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of a Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and termination in part of countervailing duty administrative review.

SUMMARY: In response to requests by a respondent, Acero Porcelanizado, S.A. de C.V. (APSA), and by the Government of Mexico on behalf of Esmaltaciones San Ignacio S.A. (San Ignacio), the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico for APSA and San Ignacio (60 FR 19017; January 13, 1995). Because the Government of Mexico withdrew its request for review of San Ignacio, the Department is now terminating this review in part with respect to San Ignacio.

We preliminarily determine the net subsidy to be *de minimis* for APSA for the period January 1, 1994 through December 31, 1994. If the final results remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from APSA exported on or after January 1, 1994, and on or before December 31, 1994. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Norma Curtis or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; Telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1986, the Department published in the Federal Register (55 FR 51139) the countervailing duty order on porcelain-on-steel cookingware from Mexico. On December 6, 1994, the Department published in the Federal Register a notice of ''Opportunity to Request Administrative Review'' (60 FR 62710) of this countervailing duty order. We received timely requests for review from APSA, a respondent company, and the Government of Mexico on behalf of respondent company, San Ignacio.

On January 13, 1995, we initiated the review for APSA and San Ignacio covering the period January 1, 1994 through December 31, 1994 (POR), (60 FR 19017). On August 8, 1995, the Government of Mexico withdrew its request for review for San Ignacio. Under CFR 355.22 (a) (3) (1994), a party requesting a review may withdraw that request no later than 90 days after the date of publication of the notice of initiation or at any later time if the Department decides that it is reasonable to do so. Although the Government of Mexico's withdrawal occurred outside of the time frame specified in 19 CFR 355.22 (a) (3), the Department has decided that because substantial resources had not yet been devoted to the review with respect to San Ignacio, it is reasonable to terminate this review in part with respect to San Ignacio.

We conducted a verification of the questionnaire responses submitted by APSA on July 12, 1995 through July 13, 1995. The review now covers one manufacturer/exporter of the subject merchandise, APSA, and ten programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751 (a) of the Tariff act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by this review are shipments of porcelain-on-steel

cookingware from Mexico. The products are porcelain-on-steel cookingware (except teakettles), which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item number 7323.94.0020 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

I. Programs Previously Determined to Confer Subsidies—BANCOMEXT Financing for Exporters

Banco Nacional de Comercio Exterior, S.N.C. (Bancomext) is a government program through which short-term financing is provided to producers or trading companies engaged in export activities. In order to be eligible for Bancomext financing, a company must be established according to Mexican law, it must be at least 30 percent owned by Mexican nationals, and it must be an exporter. Bancomext provides two types of financing to exporters, denominated in either U.S. dollars or in Mexican pesos: working capital (pre-export loans), and loans for export sales (export loans). In addition, Bancomext may provide financing to foreign buyers of Mexican goods and services.

The Department has previously found this program to confer an export subsidy to the extent that the loans are provided at preferential terms (See Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review (56 FR 48163; September 24, 1991) and Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review (57 FR 562; January 7, 1992)). In this review the Government of Mexico provided no new information that would lead the Department to alter that determination.

APSA had Bancomext loans on which interest was due during the POR. We found that the annual interest rates that Bancomext charged to borrowers for certain loans on which interest payments were due during the review period were lower than the commercial rates. The dollar-denominated Bancomext loans under review were granted at annual interest rates ranging from 6.25 percent to 8.7 percent. To determine the extent to which these loans are provided at preferential terms, we compared them to a benchmark which was determined by using the average quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which resulted in an annual average benchmark of 6.5 percent in 1993 and 6.9 percent in 1994. This is the same benchmark calculation methodology that has been applied in prior reviews (See Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review (56 FR 48163; September 24, 1991) and Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review (57 FR 562; January 7, 1992)).

We consider the benefits from short-term loans to occur at the time the interest is paid. Because interest on Bancomext pre-export loans is paid at maturity, we calculated benefits based on loans that matured during the review period; such loans were obtained between October 1993 and August 1994.

To calculate the benefit for APSA, we multiplied the difference between the interest rate charged to the exporter for these loans and the benchmark interest rate by the principal and then multiplied this amount by the term of the loan divided by 365. Since APSA was not able to tie their loans to specific sales, we divided the benefit by total export sales. On this basis, we preliminarily determine the subsidy from this program to be 0.01 percent *ad valorem* for APSA.

II. Programs Preliminarily Found Not To Be Used

We also examined the following programs and preliminarily determine that the exporters of the subject merchandise did not apply for or receive benefits under these programs during the review period:

(A) Certificates of Fiscal Promotion (CEPROFI)
(B) PITEX
(C) Other Bancomext Preferential Financing
(D) Import Duty Reductions and Exemptions
(E) State Tax Incentives
(F) Article 15 Loans
(G) NAFINSA FOGAIN-type Financing
(H) NAFINSA FONEI-type Financing
(I) FONEI

Preliminary Results of Review

For the period January 1, 1994 through December 31, 1994, we preliminarily determine the net subsidy to be 0.01 percent *ad valorem* for APSA. In accordance with 19 CFR 255.7, any rate less than 0.5% *ad valorem* is *de minimis*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from APSA exported on or after January 1, 1994, and on or before December 31, 1994.

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of the subject merchandise from APSA entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. The cash deposit rates for all other producers/exporters remain unchanged from the last completed administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit written arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under section 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: September 15, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23890 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–601]

Fresh Cut Flowers From Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative review.

SUMMARY: In response to a request by the Floral Trade Council (petitioner), and three respondents, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. The review covers eleven producers/exporters, and entries of the subject merchandise into the United States during the period April 1, 1993, through March 31, 1994. We have preliminarily determined to assign margins based on the best information available (BIA) to five of these producers due to their failure to respond to our request for information. We have preliminarily determined that zero margins exist for three other producers. Two producers, Rancho Daisy (Daisy) and Visaflor F. de P.R. (Visaflor), made no shipments to the United States during the period of review (POR).

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5831/4114.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1987, the Department published in the Federal Register an antidumping duty order on certain fresh cut flowers from Mexico (52 FR 13491). On April 7, 1994, the Department published a notice of opportunity to request an administrative review of this antidumping duty order (59 FR 16615). In accordance with 19 CFR 353.22(a)(1), petitioner requested an administrative review on April 29, 1994. Also on that date, Rancho Guacatay (Guacatay), Rancho el Toro (Toro), and Rancho Aguaje (Aguaje) requested that the Department conduct a review, and upon completion of the review, revoke the antidumping order as it pertains to all three producers. We published a notice of initiation on May 12, 1994 (59 FR 24683), covering Visaflor, Tzitzic Tareta, Daisy, Rancho Alisitos (Alisitos), Rancho Mision el Descanso (Mision el Descanso), Rancho Las Dos Palmas (Las Dos Palmas), Las Flores de Mexico (Las Flores), Rancho del Pacifico (Pacifico), Aguaje, Toro, Guacatay, and Mexipel, S.A. de CV (Mexipel) and the period April 1, 1993, through March 31, 1994.

On August 23 and May 25, 1994, Daisy and Visaflor respectively stated that they did not ship subject merchandise from Mexico to the United States during the POR. We verified their claim through the U.S. Customs Service. On November 15, 1994, the Department was informed that Las Dos Palmas ceased to exist in 1986, and became Aguaje. (See memorandum to the file dated 5/15/95.) The Department received no questionnaire responses from Tzitzic Tareta, Alisitos, Mision el Descanso, Las Flores, and Mexipel. Therefore, we have based our results for these five respondents on BIA.

Applicable Statutes and Regulations

The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise stated, all citations to the statutes and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

The products covered by this review are certain fresh cut flowers, defined as standard carnations, standard chrysanthemums, and pompon chrysanthemums. During the POR, such merchandise was classifiable under Harmonized Tariff Schedule of the United States (HTSUS) items 0603.10.7010 (pompon chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The HTSUS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive as to the scope of the order.

This review covers sales of the subject merchandise entered into the United States during the period April 1, 1993, through March 31, 1994.

United States Price

As in the original less-than-fair-value (LTFV) investigation and in all prior administrative reviews, all United States prices were weight-averaged on a monthly basis to account for the perishability of the product. In accordance with the methodology established in the 1989–1990 review, we also calculated United States price by flower type, without regard to specific grades. (See Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico, 56 FR 29621 (June 28, 1991).)

For sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. For sales to the first unrelated purchaser that took place after importation into the United States, we based United States price on exporter sales price (ESP). Purchase price and ESP transactions were based, where applicable, on the packed f.o.b. prices to the first unrelated purchaser in the United States. We made deductions from purchase price and ESP, where applicable, for foreign and U.S. inland freight, U.S. and Mexican Customs clearance fees, U.S. and Mexican brokerage and handling charges, indirect selling expenses, and credit. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value (FMV), we used home market prices to unrelated purchasers or constructed value (CV), as defined in section 773 of the Act.

Because the Department determined during the prior completed administrative review that Guacatay made sales in the home market below the cost of production (COP)(See Final Results of Administrative Review; Certain Fresh Cut Flowers from Mexico, 57 FR 19597 (May 7, 1992)), we initiated a COP investigation with respect to Guacatay. We tested, on a monthly sales aggregate basis, whether net home market price was greater than the sum of cost of production (COP) and packing. We determined that no sales in the home market were made below the cost of production.

Where applicable, home market price was based on the packed, delivered price to unrelated purchasers in the home market. When CV was used, it consisted of the sum of the costs of materials, labor, direct and indirect overhead, selling, general and administrative expenses (SG&A), and

profit. We added the greater of the actual value for SG&A or the statutory minimum of 10 percent of the cost of materials and fabrication, in accordance with section 773(e) of the Act. Where the actual profit was less than the statutory minimum of eight percent of the sum of materials, labor, direct and indirect overhead, and SG&A, we added the statutory minimum.

Where applicable, we made adjustments for commissions, indirect selling expenses, credit, and differences in packing costs. No other adjustments were claimed or allowed.

Best Information Available

Because we received no questionnaire responses from Tzitzic Tareta, Alisitos, Mision el Descanso, Las Flores, and Mexipel, we have determined that they are uncooperative respondents. As a result, in accordance with section 776(c) of the Act, we have determined that the use of BIA is appropriate. Whenever, as here, a company refuses to cooperate with the Department, or otherwise significantly impedes an antidumping proceeding, we use as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation or in prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise. (See Antifriction Bearings from France, et. al; Final Results of Review, 58 FR 39729 (July 26, 1993).) As BIA, we assigned the rate of 39.95 percent, which is the second highest rate found for any Mexican flower producer from the prior reviews and the LTFV investigation. We have selected this rate because the highest rate found for any Mexican flower producer in prior reviews and the LTFV investigation, 264.43 percent, is not representative.

This rate was due to a company's extraordinarily high business expenses during the review period resulting from investment activities which were uncharacteristic of the other reviewed companies. Therefore, we found it inappropriate to use this rate as BIA, both in prior reviews and in this review. (See Notice of Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico, 56 FR 29621, 29623 (June 28, 1991).)

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist for the period April 1, 1993, through March 31, 1994:

Manufacturer/exporter	Margin (percent)
Visaflor	[1] 0.00
Rancho Daisy	[1] 0.00
Rancho del Pacifico	0.00
Rancho el Toro	0.00
Rancho Guacatay	0.00
Rancho Aguaje	1.54
Mexipel, S.A. de CV	39.95
Tzitzic Tareta	39.95
Rancho Alisitos	39.95
Rancho Mision el Descanso	39.95
Las Flores de Mexico	39.95

[1] No shipments subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments.

We have preliminarily determined not to revoke the antidumping order with regard to Guacatay, Toro, and Aguaje, because they preliminarily received a non-de minimis dumping margin in the 1991–92 review. If those results become final, these producers will not be eligible for revocation in this review because they will not have three consecutive reviews with zero margins.

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the publication date of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the result of its analysis of issues raised in any such case briefs.

The following deposit requirements shall be effective for all shipments of the subject merchandise that are entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies shall be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate shall be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 18.28 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: September 15, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23789 Filed 9–25–95; 8:45 am]

BILLING CODE 3510DS–P

[A–428–801]

Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From Germany; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews.

SUMMARY: On February 28, 1995, the Department of Commerce (the Department) published the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France et al. (including Germany) (60 FR 10900). Pursuant to instructions issued by the Court of International Trade (CIT) on July 26, 1995, we have corrected two errors with respect to AFBs from Germany sold by FAG Kugelfischer Georg Schaefer KgaA (FAG). There errors were present in our first amended final results of review, which were published on June 13, 1995. The reviews cover the period May 1, 1992, through April 30, 1993. The ''classes or kinds'' of merchandise covered by these reviews are ball bearings and parts thereof (BBs),

cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs).

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Michael Rill, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1995, the Department published the final results of antidumping duty administrative review, partial termination, and revocation in part of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, et al. (60 FR 10900). The review period is May 1, 1992, through April 30, 1993. The classes or kinds of merchandise covered by these reviews are BBs CRBs, and SPBs. For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the ''Scope Appendix'' of the final results referenced above.

On May 3, 1995, the CIT ordered the Department to correct four ministerial errors in the final results with respect to AFBs from Germany sold by FAG. On June 13, 1995, we amended our final results of administrative review of the antidumping duty orders on AFBs from Germany and Italy with respect to FAG. On July 26, 1995, the CIT ordered the Department to correct two additional errors and to publish a second amended *Final Results* incorporating these corrections.

The CIT ordered the Department to make the following corrections to its analysis for FAG Germany: (1) reinstate 1992 sales made to those customers to whom rebates were granted in 1992 and remove 1993 sales made to the one U.S. customer for whom corporate rebates were reported (prior to applying the BIA rate to 1993 sales) and to reinstate these 1993 sales in the total U.S. sales database; and 2) subtract other discounts (OTHDISE) from the reported unit price (UNITPRE) prior to applying the BIA rate to UNITPRE.

We have corrected these errors in FAG's margin calculations for the amended final results of review and have determined that the following percentage weighted-average margins exist for the period May 1, 1992, through April 30, 1993:

Manufacturer/ exporter	Country	BBs	CRBs	SPBs
FAG	Germany	10.40	13.79	14.61

Based on these results, the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews. These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: September 15, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23891 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–201–601]

Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 17, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. The period of review is April 1, 1991 through March 31, 1992.

We gave interested parties an opportunity to comment on our preliminary results. We have not changed our preliminary results of review.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 1995, the Department published in the Federal Register (60 FR 19209) the preliminary results of this administrative review of the antidumping duty order on certain fresh cut flowers from Mexico (52 FR 13491, April 23, 1987). The preliminary results indicated the existence of dumping margins for three of the respondents in this review, Rancho El Aguaje (Aguaje), Rancho Guacatay (Guacatay), and Rancho El Toro (Toro), based on the best information available (BIA). The fourth respondent, Visaflor S. de P.R. (Visaflor), had no shipments to the United States during the period of review.

Aguaje, Guacatay, Toro, and the petitioner, the Floral Trade Council, submitted case and rebuttal briefs. A public hearing was held on May 31, 1995. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statutes and Regulations

Unless otherwise stated, all citations to the statutes and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

The products covered by this review are certain fresh cut flowers, defined as standard carnations, standard chrysanthemums, and pompon chrysanthemums. During the POR, such merchandise was classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) item numbers 0603.10.7010 (pompon chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The HTSUS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive as to the scope of the order.

This review covers sales of the subject merchandise manufactured by Aguaje, Guacatay, Toro, and Visaflor, and entered into the United States during

the period April 1, 1991, through March 31, 1992.

Best Information Available

We have determined that Guacatay, Toro and Aguaje are uncooperative respondents for the following reasons. In prior administrative reviews, the respondents were not required under Mexican law to maintain audited financial statements or file tax returns. We accepted their unaudited ''in-house'' financial statements, because they did not have, and therefore could not submit, official corroboration of their internal records. *See Notice of Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico,* 56 FR 29621, 59622 (June 28, 1991). Mexican law governing incme tax reporting changed in 1991, however, and the respondents were required to file tax returns covering the POR.

In response to the Department's repeated questions regarding the existence of income tax returns covering the POR, the respondents made evasive and misleading statements regarding their obligations to file tax returns, which significantly impeded this review. Guacatay and Toro failed to reconcile their financial statements to their tax returns, once submitted, and Aguaje failed to provide sufficient support for its claim that it had not filed tax returns covering the POR.

Analysis of the Comments Received

Comment One: The respondents dispute that their statements regarding their obligations to file tax returns were inconsistent, and that the data they submitted were unusable. They claim that recent changes in Mexican tax law, the unclear wording of the Department's supplemental questionnaire, and the Department's misunderstanding of their responses were the causes of any seemingly inconsistent statements regarding their tax filing obligations.

Guacatay and Toro claim that they failed to promptly provide the reconciliations between tax records and financial statements because they misunderstood the Department's usage of the term ''reconciliation''. They state that, once they properly understood the Department's request, they attempted to submit the information, but the Department refused to accept it .

Guacatay and Toro also maintain that the documentation pertaining to U.S. sales quantities and values can be independently substantiated by growers' reports, which the respondents have placed on the record. They suggest that the Department apply partial BIA to production costs, the only information, they state, for which there is no independent substantiation on the record.

The petitioner believes that Guacatay and Toro's argument that they misunderstood the Department's request for reconciliations is disingenuous, since the Department often requires respondents to provide such worksheets. The petitioner observes that both respondents participated in a prior administrative review, and had retained experienced legal counsel throughout this review. Finally, the petitioner claims that Guacatay and Toro admitted that their responses do not reconcile to their tax documents, and therefore, the submitted data are unreliable, and unusable.

The Department's Position: We disagree with the respondents. The supplemental questionnaire was clear, and our request for a reconciliation between tax returns and financial statements was not unusual. Whenever a respondent does not understand the Department's questions or directions, it is the responsibility of the respondent to ask the Department for clarification. None of the respondents requested such a clarification.

Guacatay's and Toro's offers to provide the requested reconciliations came several months after they had submitted their last supplemental questionnaire responses in which they stated that they could not perform the reconciliations. Further, the respondents made this offer during the verification of the 1992–1993 review period. As each administrative review is a separate proceeding, the Department could not accept this new factual information while conducting a verification associated with a different administrative review.

We also disagree that the sales volume and value portions of Guacatay's and Toro's questionnaire responses can be independently substantiated with documents on the record of this review. In prior administrative reviews, the Department did not require the level of independent substantiation as it does in this review, because none existed. In the absence of audited financial statements in this review, we required that the respondents submit their tax returns as a way to independently substantiate their questionnaire responses. Sales and cost information is presented differently in these two documents. Thus, an explanation of how the figures on the tax returns reconcile with the ranches' financial statements is also required. Without this explanation, the Department cannot use the tax returns to independently substantiate the reported sales and costs; without such independent substantiation, the entire questionnaire responses are unusable.

Comment Two: Guacatay, Toro and Aguaje claim that the Department unfairly characterized them as uncooperative respondents in the preliminary results of review. The respondents state that they have cooperated fully, submitting multiple questionnaire responses, in spite of their limited resources and small size.

Guacatay and Toro argue that even if BIA were warranted, they should not be characterized as uncooperative. They assert that in past cases, the Department has limited the designation of uncooperative respondents to cases of major non-compliance or where there is evidence of systematic misreporting. Further, pursuant to *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993), they argue, it is improper for the Department to designate as uncooperative a respondent who has tried in good faith to comply with the Department's requests for information.

Citing *Olympic Adhesives, Inc.* v. *United States*, 899 F.2d 1565 (Fed. Cir. 1990), Aguaje argues that the Department has no legal grounds to use BIA in response to a respondent's inability to provide information that does not exist. Further, Aguaje asserts that the Department has no authority to penalize a foreign exporter for a perceived failure to comply with a foreign law.

The petitioner believes that the Department was correct in rejecting the questionnaire responses, and that the Department is compelled to resort to uncooperative BIA. The petitioner argues that the respondents' size and resources should not be a consideration, since their eventual offers to provide the requested information indicate that they were in fact able to provide it in the form requested and in a timely manner.

The petitioner also claims that the respondents substantially impeded the review and limited the Department's access to certain data by dodging repeated requests for information as to the existence of source documents and making inconsistent statements regarding their obligation to file tax returns. Finally, the petitioner argues that the respondents' contradictory statements undermine the credibility of their entire responses, and their evasiveness overshadows all other attempts at cooperation.

The Department's Position: We disagree with the respondents that they have fully cooperated with our requests for information in this review, and that our use of uncooperative BIA is unjustified. The respondents' answers to

the Department's supplemental questionnaires were evasive and misleading, and significantly impeded the progress of the review.

As stated above, we disagree that the respondents tried in good faith to comply with the Department's requests for information. It was not until the Department had issued its third supplemental questionnaire addressing this issue, specifically requesting the tax returns required under Mexican law, that the respondents revealed their true tax status. While Guacatay and Toro finally provided tax returns, the documents were illegible, untranslated, and were not accompanied by the requested reconciliation worksheets.

With regard to Aguaje, at issue in this review is whether it had provided, within the time limits set out in 19 CFR 353.31(a)(2), sufficient evidence demonstrating that it did not file tax returns. The correspondence Aguaje finally submitted in response to the Department's third supplemental questionnaire concerning this issue, did not support the ranch's statement that no tax returns had been filed.

Therefore, we maintain our position that Guacatay, Toro, and Aguaje were uncooperative, and have applied total BIA to their U.S. sales.

Comment Three: The three respondents argue that the Department should take into consideration information on the administrative records of the prior and subsequent reviews for the final results of this review, because this information will attest to the reliability of the data they have submitted for this review. Aguaje states that the Department has the authority to review public documents, and documents submitted in related proceedings in deciding the issues before it.

The petitioner disagrees that the Department may incorporate documents from other reviews into the record of this review after the deadline for the submission of factual information has expired. The petitioner also states that the Department's regulations regarding the requirements for verification preclude it from relying on past verifications to corroborate the reliability of the respondents' data in this review.

The Department's Position: We disagree with the respondents. The timeframe for submitting new factual information is clearly stated in section 19 C.F.R. 353.31(b)(2) of the Department's regulations. The information to which the respondents refer was not placed on the record of this review within the prescribed time limits. To accept new information at this point in the proceeding would be inconsistent with the Department's regulations.

Comment Four: The petitioner contends that the Department's choice of a BIA rate of 39.95 percent was unnecessarily generous. Because respondents are presumed to be aware of the highest rate at the time of filing, petitioner claims the rate should be 264.43 percent, a rate deemed aberrational by the Department in its preliminary results.

The respondents argue that the highest rate is not probative of current market conditions, and reflects business conditions uncharacteristic of the companies subject to this review.

The Department's Position: We agree with the respondents. For the final results of the 1989–1990 review, the Department assigned the second highest rate in any prior review or the LTFV investigation, because we found that the highest rate of 264.43 percent was inappropriate to use as BIA,

> Given the enormous disparity between the verified rate for Florex in this review and the verified rates for other companies in this review, prior reviews, and the original investigation, and Florex's extraordinarily high business expenses during this review period resulting from investment activities which are uncharacteristic of other companies subject to this review * * *''

Notice of Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico, 56 FR 29621, 29623 (June 28, 1991). Since these conditions are also applicable to this review, the rate of 264.43 percent remains aberrational. *See Floral Trade Council* v. *United States,* 799 F. Supp 116, 119–20 (CIT 1992).

Comment Five: The petitioner requests that the Department identify record evidence leading to its finding that Visaflor made no shipments to the United States during the POR. The petitioner argues that, given Visaflor's past record of non-coorperation in reviews, the Department should not accept Visaflor's certification without verification. According to the petitioner, without such verification, the Department should assign Visaflor a margin based on best information of 29.40 percent, the margin calculated for Visaflor in the 1989–1990 review.

The Department's Position: To determine whether Visaflor made any shipments to the United States during the POR, the Department followed its standard practice of issuing an electronic mail message to all Customs Service field personnel, requesting notification if the subject merchandise exported by Visaflor entered the United States during the POR. The Department does not require negative responses to these messages. Because we received no affirmative responses from Customs field personnel, we concluded that Visaflor made no shipments to the United States during the POR.

Final Results

We determine that the following dumping margins exist for the period April 1, 1991, through March 31, 1992:

Manufacturer/exporter	Margin (percent)
Rancho el Aguaje	39.95
Rancho Guacatay	39.95
Rancho el Toro	39.95
Visaflor	[1]

[1] No shipments during the POR. Rate is from the last review in which Visaflor had shipments.

The following deposit requirements shall be effective for all shipments of the subject merchandise that are entered, or withdrawn from warehouse for consumption, on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies shall be the above rates; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate shall be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 18.28 percent, the all others rate established in the LTFV investigation.

These deposit requirements, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 C.F.R 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their

responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. 353.34(d) or 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: September 15, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23884 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

SUMMARY: In response to requests by the petitioner and one respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (PRC). The period of review (POR) is June 1, 1993, through May 31, 1994. The review indicates the existence of dumping margins during this period.

We have preliminarily determined that sales have been made below foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between United States price (USP) and FMV. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, Hermes Pinilla, Andrea Chu, Kris Campbell or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington DC 20230; telephone (202) 482–4733.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On June 7, 1994, the Department published in the Federal Register (59 FR 29411) a notice of opportunity to request an administrative review of the antidumping duty order on TRBs from the PRC. In accordance with 19 C.F.R. 353.22(a), the petitioner, The Timken Company, requested that we conduct an administrative review. In addition, respondent Shanghai General Bearing Company (Shanghai) requested revocation pursuant to 19 C.F.R. 353.25(b) (revocation based on not selling subject merchandise at less than foreign market value for three consecutive years). We published a notice of initiation of this antidumping duty administrative review on August 24, 1994 (59 FR 43537), covering the period June 1, 1993, through May 31, 1994 (the 7th review period).

On July 26, 1994, we notified the PRC government, through its embassy in Washington, that we were conducting this review and requested information relevant to the issue of whether the companies named in the initiation request are independent from government control. See Separate Rates, *infra.* On the same date, we also notified the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC) of this review.

On July 28, 1994, a representative from MOFTEC informed us that the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics (CCCME) would be the designated contact for the PRC in this review. On December 5, 1994, we sent a copy of the questionnaire to the Secretary General of CCCME and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice.

We also sent questionnaires to the Hong Kong companies listed in our initiation notice, using addresses supplied in the petitioner's initiation request as well as information from the Hong Kong branch of the U.S. & Foreign Commercial Service.

On December 7–9, 1994, we conducted a presentation of the questionnaire in Beijing. The following companies attended the presentation: China National Machinery & Equipment Import & Export Corporation (CMC), Liaoning Machinery Import & Export Corporation (Liaoning), Henan Machinery & Equipment Import & Export Corporation (Henan), China National Automotive Industry Import & Export Guizhou Corporation (Guizhou Automotive), Luoyang Bearing Factory (Luoyang), Jilin Province Machinery Import & Export Corporation (Jilin), Tianshui Hailin Import & Export Corporation (Tianshui), Wafangdian Bearing Industry Import & Export Corporation (Wafangdian), Guizhou Machinery Import & Export Corporation (Guizhou), Zhejiang Machinery Import & Export Corporation (Zhejiang), and a voluntary respondent that did not request a review and which was not named in the initiation notice, Xiangfan International Trade Corporation (Xiangfan).

We received responses to our questionnaire from fourteen companies, consisting of the companies that attended the questionnaire presentation, Shanghai, and two Hong Kong resellers: Premier Bearing and Equipment Company, Ltd. (Premier), and Chin Jun Industrial, Ltd. (Chin Jun).

Scope of Review

Imports covered by this review are shipments of TRBs and parts thereof, finished and unfinished, from the PRC. This merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30 and 8483.90.80. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Separate Rates

1. Background and Summary of Findings

It is the Department's standard policy to assign all exporters of the merchandise subject to review in non-market economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes

the exporter in light of the criteria established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) (Sparklers), as amplified in Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China (59 FR 22585, May 2, 1994) (Silicon Carbide). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See Sparklers at 20589. Evidence relevant to a *de facto* analysis of absence of government control over exports is based on four factors: (1) whether the respondent sets its own export prices independent from the government and other exporters; (2) whether the respondent can retain the proceeds from its export sales; (3) whether the respondent has the authority to negotiate and sign contracts; and (4) whether the respondent has autonomy from the government regarding the selection of management. See Silicon Carbide at 22587; see also Sparklers at 20589.

The Department preliminarily determined that Guizhou, Henan, Jilin, Luoyang, Liaoning, Wafangdian, Guizhou Automotive, and Shanghai were entitled to separate rates during the concurrent administrative reviews of the 1990–91, 1991–92, and 1992–93 review periods (each covering the period June 1–May 31). See (cite to 4–6 prelim., unsigned as of 7/26). Information submitted by these companies for the record in the current review is consistent with these findings. Further, there have been no allegations of changes in control of these companies in this review. Therefore, we preliminarily determine that the government does not exercise control over the export activities of these firms. Accordingly, we will calculate rates separate from the PRC rate for each of the above companies.

In the 1989–90 review, we determined that CMC was entitled to a separate rate. See Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof from the People's Republic of China (56 FR 67590, 67597, December 31, 1991). Information submitted by CMC for the record in the current review, including information gathered at verification concerning certain criteria that were not analyzed in the 1989–90 separate rate determination (see Additional Separate Rate Criteria Applied to CMC, *infra*), is consistent with this finding, and there have been no allegations in this review of changes in the control of CMC's export activities. Accordingly, we have preliminarily determined that the government does not exercise control over CMC's export activities, and that CMC is therefore entitled to a separate rate in this review.

Tianshui, Zhejiang, and Xiangfan also meet both the *de jure* and *de facto* criteria and are therefore entitled to separate rates (see *De Jure Analysis* and *De Facto Analysis, infra*).

Finally, with respect to Premier and Chin Jun, no separate rates analysis is required because these companies are privately owned trading companies located in Hong Kong.

2. De Jure Analysis: Tianshui, Zhejiang, and Xiangfan

Information submitted during this review indicates that Tianshui, Zhejiang, and Xiangfan are owned ''by all of the people''. In Silicon Carbide (at 22586), we found that the PRC central government had devolved control of state-owned enterprises, *i.e.*, enterprises owned ''by all the people''. As a result, we determined that companies owned ''by all the people'' were eligible for individual rates, if they met the criteria developed in Sparklers and Silicon Carbide.

The following laws, which have been placed on the record in this case, indicate a lack of *de jure* government control over these companies, and establish that the responsibility for managing companies owned by ''all the people'' has been transferred from the government to the enterprise itself. These laws include: ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (1988 Law); ''Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises,'' approved on August 23, 1992 (1992 Regulations); and the ''Temporary Provisions for Administration of Export Commodities,'' approved on December 21, 1992 (Export Provisions). The 1988 Law states that enterprises have the right to set their own prices (see Article 26). This principle was restated in the 1992 Regulations (see Article IX). Finally, the 1992 ''Temporary Provisions for Administration of Export Commodities'' list those products subject to direct government control. TRBs do not appear on this list and are not therefore subject to the constraints of these provisions.

Consistent with Silicon Carbide, we preliminarily determine that the existence of these laws demonstrates that Tianshui, Zhejiang, and Xiangfan, companies owned by ''all the people,'' are not subject to *de jure* government control with respect to export activities. In light of reports [1] indicating that laws shifting control from the government to the enterprises themselves have not been implemented uniformly, an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to government control with respect to export activities.

3. De Facto Analysis: Tianshui, Zhejiang, and Xiangfan

The following record evidence, which is contained in the questionnaire responses, indicates a lack of *de facto* government control over the export activities of Tianshui, Zhejiang, and Xiangfan. We have found that these respondents' pricing and export strategy decisions are not subject to any entity's review or approval, and that there are no government policy directives that affect these decisions. There are no restrictions on the use of respondents' revenues or profits, including export earnings.

Each company's general manager has the right to negotiate and enter into contracts, and may delegate this authority to other employees within the company. There is no evidence that this authority is subject to any level of governmental approval.

The general manager is elected by an employees' assembly. The election results are then recorded with the relevant provincial or municipal bureau (*e.g.*, the Zhejiang Provincial Foreign Trade and Economic Cooperation Commission in the case of Zhejiang). There is no evidence that these bureaus control the selection process or that they have rejected a general manager selected through the employee election process. The employee assemblies can remove the general manager, typically under the authority of the company's Articles of Association, in the case of mismanagement or violation of Chinese law.

Decisions made by respondents concerning purchases of subject merchandise from other suppliers are

[1] See ''PRC Government Findings on Enterprise Autonomy,'' in Foreign Broadcast Information Service-China-93–133 (July 14, 1993) and 1992 Central Intelligence Agency Report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt.2 (102 Cong., 2d Sess.).

not subject to government approval. Finally, respondents' sources of funds are their own savings or bank loans, and they have sole control and access to their bank accounts, which are held in each company's name.

Based on the foregoing analysis of the evidence of record, we find no evidence of either *de jure* or *de facto* government control over the export activities of Tianshui, Zhejiang, and Xiangfan. Accordingly, each of these exporters will receive a separate rate.

Because we have preliminarily determined that the voluntary respondent Xiangfan is entitled to a separate rate and no review was requested for this company, we have not reviewed its entries during the 93–94 review period (see Background section above). Therefore, the current cash deposit rate established for this company in the 1989–90 review of this case (*i.e.,* the 1989–90 PRC rate) will continue to apply for future cash deposits unless this rate is replaced by a more recent PRC rate (*i.e.,* from the concurrent 1990–91, 1991–92, and 1992–93 reviews) before the publication of these final results.

4. Additional Separate Rate Criteria Applied to CMC

The Department's determination that CMC was entitled to a separate rate during the administrative review of the 1989–90 POR was made pursuant to the *de jure* criteria cited above, as well as the *de facto* criteria developed in *Sparklers* (criteria (1) and (2) above). However, this determination was made prior to the development of the additional *de facto* criteria that were considered in *Silicon Carbide* (criteria (3) and (4) above). Accordingly, for the preliminary results of this review we have examined the extent to which CMC maintains the authority to negotiate and sign contracts and its degree of autonomy in the selection of management. Record evidence relevant to these criteria indicates that CMC independently negotiates contracts free of government control and is autonomous in its selection of management.

Although CMC's response to our separate rates questionnaire indicates that the general manager and deputy general manager are appointed by MOFTEC, a more detailed examination of this issue at verification revealed that MOFTEC's only involvement is a requirement that the selection of these managers be recorded with MOFTEC. Our verification findings indicate that these managers are selected by an employee assembly, which in turn is elected by the employees of the company. At verification we examined the ballots used for the election of the employee assembly as well as CMC's Articles of Association, which detail the procedural requirements for such elections. Our discussions with company officials indicated that MOFTEC could annul the election results but it has never done so.

Our verification findings also indicate that the authority to negotiate and enter into contracts on behalf of CMC rests with the managers of each subsidiary department (*e.g.*, CMC Baili, the export division of CMC) and that such contract negotiation is not subject to the approval of any outside entity.

5. Separate Rate Determinations for Non-responsive Companies

For those companies for which we initiated a review and which did not respond to the questionnaires, as best information available (BIA), we have determined that these companies do not merit separate rates. See ''Best Information Available'' section below.

United States Price

For sales made by Luoyang, Zhejiang, Tianshui, Wafangdian, Liaoning, Jilin, Guizhou, Guizhou Automotive, and Premier, we based the USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States, and because exporter's sales price (ESP) methodology was not indicated by other circumstances. For sales made by Shanghai and Chin Jun, we based USP on ESP, in accordance with section 772(c) of the Act, because sales to the first unrelated purchaser took place after importation into the United States. CMC and Henan had a combination of purchase price and ESP sales subject to review.

We calculated purchase price based on, as appropriate, the FOB, CIF, or C&F port price to unrelated purchasers. We made deductions for brokerage and handling, foreign inland freight, ocean freight, and marine insurance. When marine insurance and ocean freight were provided by PRC-owned companies, we based the deduction on surrogate values. See Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China, 59 FR 58818, 58825 (November 15, 1994). We valued foreign inland freight deductions using surrogate data based on Indian freight costs. We selected India as the surrogate country for the reasons explained in the ''Foreign Market Value'' section of this notice. We calculated ESP based on the packed, ex-warehouse price from the U.S. subsidiary to unrelated customers. We made deductions from ESP for U.S. packing in the United States, ocean freight, foreign brokerage & handling, foreign inland freight, marine insurance, customs duty, U.S. brokerage, U.S. inland freight insurance and U.S. inland freight.

Foreign Market Value

Section 773(c)(1) of the Act provides that the Department shall determine the FMV using a factors of production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of FMV using home market prices, third-country prices, or constructed value (CV) under section 773(a).

In the most recent review of this order, the Department treated the PRC as an NME country. In its April 17, 1995, questionnaire response, Shanghai requested that the Department accept Shanghai's actual costs, claiming that its costs were market-driven. However, in order to accept the costs of a company in an NME country, the Department must determine that the industry in which that company operates, not just a particular company, is market-oriented. See, *e.g.*, Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Pure and Alloy Magnesium from the Russian Federation, 59 FR 55427, 55430 (November 7, 1994) (''an NME-country respondent may argue that market-driven prices characterize its particular industry and, therefore, despite NME status, that foreign market value should be calculated using actual home market prices or costs'' (emphasis added)).

Because neither Shanghai, nor any other company in these reviews, has argued that the TRB industry in the PRC is market-oriented, we continue to consider that industry to be non-market-oriented and, therefore, we have applied our standard NME methodology and surrogate values to Shanghai's factors of production to determine FMV and movement costs.

Except as noted below, we calculated FMV based on factors of production in accordance with section 773(c) of the Act and section 353.52 of our regulations. We chose India as the most comparable surrogate on the basis of the criteria set out in section 353.52(b). See Memorandum from Director, Office of Policy to Program Manager, Office of Antidumping Compliance, dated November 23, 1994. Further, information on the record indicates that India is a significant producer of TRBs. See Memorandum from the analyst to

the file, dated July 27, 1995. We used publicly available information relating to India to value the various factors of production.

We valued the factors of production as follows:

- For hot-rolled alloy steel bars and rods, and irregular coils, used in the production of rollers, hot-rolled alloy steel bars and rods, used in the production of cups and cones, cold-rolled strip and sheet, used in the production of cages, and bearing quality and non-bearing quality steel scrap, we used import prices obtained from Monthly Statistics of the Foreign Trade of India, Volume II- Imports. We used data from the annual issue of this source, which covers the period April 1993–March 1994, and also factored in the remaining POR months of April - May 1994. We made further adjustments to include freight costs incurred between the steel supplier and the TRB factory.

We used actual costs for certain steel inputs because they were purchased from a market-economy country. See Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the PRC, 56 FR 55271, 55275 (October 25, 1991).

- For direct labor, we used 1993 data from Investing, Licensing & Trading Conditions Abroad, India, published in November 1993 by the Economist Intelligence Unit. We then adjusted the 1993 labor value to the POR to reflect inflation using wholesale price indices (WPI) of India as published in the International Financial Statistics by the International Monetary Fund (IMF). We calculated the labor cost for each component by multiplying the labor time requirement by the surrogate labor rate. Indirect labor is reflected in the selling, general and administrative (SG&A) and overhead rates.
- For factory overhead, we used information obtained from a financial report of a producer of similar merchandise in India. From this source, we were able to calculate factory overhead as a percentage of total cost of manufacture.
- For SG&A expenses, we used information obtained from the same financial report used to obtain factory overhead. This information showed SG&A expenses as a percentage of the cost of manufacture. SG&A expenses were less than 10 percent of the cost of manufacture. Therefore, we used the statutory minimum of 10 percent of the cost of manufacture for SG&A, in accordance with sections 773(c)(1) and 773(e) of the Act.
- For profit, we used the profit rate of the same Indian producer of similar merchandise from which we derived a rate for factory overhead.
- For export packing, we applied BIA (section 776(c) of the Act) because the respondents did not supply sufficient factor information by which to calculate packing costs. We used, as BIA, one percent of the total ex-factory cost and SG&A expenses combined. This percentage, obtained from publicly available data, was used in the Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings from Italy, 52 FR 24198 (June 29, 1987). This methodology is consistent with the Department's valuation of packing in the Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings from the People's Republic of China, 56 FR 67590 (December 31, 1991). We used this percentage because there was no publicly available information from a comparable surrogate country.
- For foreign inland freight, we used the price reported in a December 1989 cable from the U.S. Embassy in India submitted for the Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the People's Republic of China, 56 FR 4040 (February 1, 1991). We adjusted the value of freight to the POR using a WPI published by the IMF.

Currency Conversion

We made currency conversions in accordance with 19 C.F.R. 353.60(a). Currency conversions were made at the rates certified by the Federal Reserve Bank.

Best Information Available

Section 776(c) of the Act provides that whenever a party refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Department shall use BIA. In deciding what to use as BIA, 19 C.F.R. 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is BIA. Whenever a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's review, the Department will normally assign to that company the higher of (1) the highest rate for any firm in the less-than-fair-value (LTFV) investigation or prior administrative reviews of sales of subject merchandise from that same country; or (2) the highest rate found in that review for any firm. When a company has cooperated with the Department's request for information but fails to provide the information requested in a timely manner or in the form required, the Department will normally assign to that company the higher of either: (1) the highest of the rates found for that firm in the LTFV investigation or prior administrative reviews; or (2) the highest calculated rate found in that review for any firm. (See Antifriction Bearings from France, et al.; Final Results of Review, 58 FR 39729 (July 26, 1993).)

Non-responsive companies

We have assigned non-cooperative BIA to those companies for which we initiated a review and which did not respond to the questionnaires. In accordance with the non-cooperative BIA formula stated above, this represents the highest rate for any firm from the LTFV investigation or any review of sales of subject merchandise from the PRC. As noted in the separate rates section above, we have determined that the non-responsive companies do not merit separate rates. Therefore, the non-cooperative BIA for these companies forms the basis for the PRC rate. The PRC rate is 57.86 percent for this review.

Responsive Companies

Premier

Premier, a reseller of TRBs from the PRC based in Hong Kong, stated it could not respond to the Department's supplemental questionnaire, which requested factors of production data. We asked Premier for factors of production data with the intent of using this information to: (1) perform a cost of production test on third-country sales, and (2) calculate CV when necessary. Premier stated that it was not in a position to request factors of production information from its suppliers. The Department then sent factors of production questionnaires to Premier's suppliers in an effort to obtain the information. We did not receive any responses from Premier's suppliers. In addition, the Department found significant errors in reported sales data at verification of Premier. Therefore, for these preliminary results we have applied, as cooperative BIA, the higher of the highest rate ever applicable to Premier or the highest calculated rate in this review.

Preliminary Results of the Review

As a result of our comparison of the USP to FMV, we preliminarily determine that the following dumping margins exist for the period June 1, 1993, through May 31, 1994:

Manufacturer/exporter	Margin (percent)
Premier Bearing and Equipment, Limited	75.87
Guizhou Machinery Import and Export Corporation	5.38
Henan Machinery and Equipment Import and Export Corporation	1.42
Luoyang Bearing Factory	2.12
Shanghai General Bearing Company, Ltd.	0.07
Jilin Machinery Import and Export Corporation	60.91
Chin Jun Industrial Ltd.	1.94
Wafangdian Bearing Factory	75.87
Liaoning Machinery Import & Export Corporation	12.06
China National Machinery & Equipment Import and Export Corporation	0.13
China Nat'l Automotive Industry Import and Export Guizhou Corporation	1.44
Tianshui Hailin Import and Export Corporation	0.00
Zhejiang Machinery Import & Export Corporation	7.83

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held approximately 44 days after the publication of this notice. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice. Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For the companies named above that have separate rates and were reviewed (Premier, Guizhou Machinery, Henan, Luoyang, Shanghai General, Jilin, Chin Jun, Wafangdian, Liaoning, CMEC, Guizhou Automotive, Tianshui, Zhejiang), the cash deposit rates will be the rates for these firms established in the final results of this review; (2) for Xiangfan, which we preliminarily determine to be entitled to a separate rate, the rate will continue be that which currently applies to this company (8.83 percent) unless modified by a more recent PRC rate (*e.g.*, from the concurrent 90–91, 91–92, or 92–93 reviews); (3) for all remaining PRC exporters, all of which were found to not be entitled to separate rates, the cash deposit will be 57.86 percent; and (4) for other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22.

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23885 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–821–803]

Titanium Sponge From Russia; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from Titanium Metals Corporation (TIMET), Berezniki Titanium-Magnesium Works (AVISMA), Interlink Metals and Chemicals, Inc. (Interlink), and RMI Titanium Company (RMI), a U.S. producer of titanium sponge, a Russian Producer of titanium sponge, an unrelated third-country reseller of titanium sponge, and a U.S. importer of titanium sponge, respectively, the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on titanium sponge from Russia. The review covers AVISMA and exports of the subject merchandise to the United States for the period August 1, 1993 through July 31, 1994.

We have preliminarily determined that AVISMA is a non-shipper for the purposes of this review because it did not have sufficient knowledge at the time of sale that subject merchandise was destined for the United States. If these preliminary results are adopted in our final results of review we will instruct the U.S. Customs service (Customs) to maintain the cash deposit rate of 83.96 percent, which is the rate established in the final results of the most recent administrative review of the antidumping finding on titanium sponge from Russia.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: David Genovese or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 482–5254.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1968, the Department of the Treasury published an antidumping finding on titanium sponge from the Union of Soviet Socialist Republics (USSR) (33 FR 12138). In December 1991, the USSR divided into fifteen independent states. To conform to these changes, the Department changed the original antidumping finding into fifteen findings applicable to the Baltic states and the former Republics of the USSR (57 FR 36070, August 12, 1992).

On August 3, 1994, the Department published a notice of ''Opportunity to Request an Administrative Review'' (59 FR 39545) of the antidumping finding on titanium sponge from Russia. On August 31, 1994, TIMET, AVISMA, Interlink, and RMI, requested an administrative review. The Department initiated the review on September 16, 1994 (59 FR 47609), covering the period August 1, 1993, through July 31, 1994.

Applicable Statute and Regulations

The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The merchandise covered by this review is titanium sponge from Russia. Titanium sponge is chiefly used for aerospace vehicles, specifically, in the construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines.

Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (HTS) subheading 8108.10.50.10. The HTS subheading is provided for convenience and Customs purposes; our written description of the scope of this finding is dispositive.

Preliminary Results of Review

In response to the Department's request for U.S. sales information, AVISMA reported that it did not export titanium sponge to the United States during the period of review. AVISMA reported that it produced and sold titanium sponge during the period of review but that it sold to unrelated intermediaries without knowledge of the ultimate destination of the merchandise.

In a subsequent submission dated May 16, 1995, AVISMA argued that, while as a general matter it did not know the ultimate destination of merchandise purchased by intermediaries, it was aware at the time of sale that at least a portion of its sales to an unrelated third-country reseller was to be resold to a customer in the United States. Therefore, AVISMA argued that the Department should conduct a review of AVISMA's sales for the 1993/94 period of review.

Also in the May 16, 1995, submission, Interlink requested that the Department continue the review regardless of the degree of knowledge possessed by AVISMA, because Interlink's request for a review of AVISMA's U.S. sales should be construed by the Department as a request for a review of Interlink's shipments of AVISMA titanium sponge to RMI.

We determined, (1) that AVISMA had insufficient knowledge at the time of sale that the merchandise was destined for the United States, and, therefore, such sales cannot be used as the basis of U.S. price; and, (2) that sales by Interlink are not covered by this review because a review of Interlink's sales was not requested. Based on the preceding determinations, the Department concluded that AVISMA was a non-shipper during the period of review, and, since AVISMA was the only company for which a review was requested, it was appropriate to proceed with preliminary results of review based on no shipments to the United States.

Accordingly, the effective cash deposit rate for Russian titanium sponge that entered the United States during the period of review will continue to be the rate from the most recent review, which is 83.96 percent.

Parties to the proceeding may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter and will be limited to those issues raised in the case briefs and/or written comments. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of any written comments or case briefs.

Furthermore, the following deposit requirement will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: The cash deposit rate for entries of titanium sponge from Russia will be that rate established in the final results of this administrative review. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 15, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23791 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–601]

Fresh Cut Flowers From Mexico; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative review.

SUMMARY: In response to requests by the Floral Trade Council (petitioner) and one respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. The review covers ten producers/exporters, and entries of the subject merchandise into the United States during the period April 1, 1992, through March 31, 1993. We have preliminarily determined that dumping margins exist for four of these producers. Two producers, Rancho Daisy (Daisy) and Visaflor F. de P.R. (Visaflor), made no shipments to the United States during the period of review (POR).

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1987, the Department published in the Federal Register an antidumping duty order on certain fresh cut flowers from Mexico (52 FR 13491). On April 9, 1993, the Department published a notice of opportunity to request an administrative review of this antidumping duty order (58 FR 18374). In accordance with 19 CFR 353.22(a)(1), the petitioner requested an administrative review on April 30, 1993. Also on that date, Rancho Guacatay

(Guacatay) requested that the Department conduct a review, and upon completion of the review, revoke the antidumping order as it pertains to Guacatay. We published a notice of initiation on May 27, 1993 (58 FR 3076), covering Guacatay, Daisy, Visaflor, Rancho el Aguaje (Aguaje), Rancho el Toro (Toro), Rancho del Pacifico (Pacifico), Florex S.P.R. (Florex), Tzitzic Tareta, S. de R.L. (Tzitzic Tareta), Rancho Alisitos (Alisitos), Rancho Mision el Descanso, Rancho Las Dos Palmas, and Las Flores de Mexico, and the period April 1, 1992, through March 31, 1993.

On August 17 and 18, 1993, Daisy and Visaflor stated that they did not ship subject merchandise from Mexico to the United States during the POR. On November 15, 1994, the Department was informed that Rancho Dos Palmas ceased to exist in 1986, and became Aguaje. (*See* memorandum to the file dated 5/15/95.)

On August 25, 1993, the petitioner timely withdrew its request for review with respect to Florex. Because there were no other requests for review of this company from any other interested party, the Department is now terminating this review with respect to Florex, in accordance with 353.22(a)(5) of the Department's regulations. We shall instruct the Customs Service to liquidate Florex's entries. Because Florex is a previously reviewed company, the cash deposit rate will continue to be the company-specific rate currently in effect for Florex.

The Department received no questionnaire responses from Tzitzic Tareta, Alisitos, Mision el Descanso, and Las Flores de Mexico. Therefore, we have based our analysis of these four respondents on the best information available (BIA).

Verification

From March 20 through March 30, 1995, the Department conducted verification of the questionnaire responses submitted by Aguaje, Guacatay, Toro, and Pacifico. We used standard verification procedures, including examination of relevant accounting records and original source documents, provided by the respondents.

Applicable Statutes and Regulations

The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise stated, all citations to the statutes and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

The products covered by this review are certain fresh cut flowers, defined as standard carnations, standard chrysanthemums, and pompon chrysanthemums. During the POR, such merchandise was classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) items 0603.10.7010 (pompon chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The HTSUS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive as to the scope of the order.

This review covers sales of the subject merchandise entered into the United States during the period April 1, 1992, through March 31, 1993.

United States Price

As in the original less-than-fair-value (LTFV) investigation and in all prior administrative reviews, all United States prices were weight-averaged on a monthly basis to account for the perishability of the product. In accordance with the methodology established in the 1989–1990 review, we also calculated United States price by flower type, without regard to specific grades. (*See Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico,* 56 FR 29621 (June 28, 1991).) In calculating United States price, we used purchase price or exporter's sales price (ESP), both as defined in section 772 of the Act. Purchase price and ESP were based, where applicable, on the packed f.o.b. prices to the first unrelated purchaser in the United States.

For sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. For sales to the first unrelated purchaser that took place after importation into the United States, we based United States price on ESP. Where sales were made through a related or unrelated consignment sales agent in the United States to an unrelated customer after the date of importation, we also used ESP as the basis for determining United States price, in accordance with section 772(c) of the Act. We made deductions from purchase price, where applicable, for foreign and U.S. inland freight, Mexican Customs clearance fees, and U.S. and Mexican brokerage and handling charges. We made additional deductions from ESP, as appropriate, for commissions to unrelated parties, indirect selling expenses, and credit. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value (FMV), we used home market prices to unrelated purchasers or constructed value (CV), as defined in section 773 of the Act.

Because the Department determined during the prior completed administrative review that Guacatay made sales in the home market below the cost of production (COP) (*see Final Results of Administrative Review; Certain Fresh Cut Flowers from Mexico,* 57 FR 19597 (May 7, 1992)), we initiated a COP investigation with respect to Guacatay. Consistent with our past practice concerning perishable products, we included all below-cost sales in the home market if less than 50 percent of respondent's sales were below the COP, if we determined that the below-cost sales were not made in substantial quantities over an extended period of time. We determined that below-cost sales were made over an extended period of time if they occurred in at least three of the months in which sales were made. If between 50 and 90 percent of respondent's sales were below the COP, we disregarded only the below-cost sales.

Where applicable, home market price was based on the packed, delivered price to unrelated purchasers in the home market. When CV was used, it consisted of the sum of the costs of materials, fabrication, general expenses, and profit. Where the actual cost for general expenses was below the statutory minimum of 10 percent of the cost of materials and fabrication, we added the statutory minimum amount in accordance with section 773(e) of the Act. Where the actual profit was less than the statutory minimum of eight percent of the sum of materials, fabrication, and general expenses, we added the statutory minimum. Where the actual amounts of general expenses and profit were above the statutory minimum amounts, we added the actual amounts.

Where applicable, we made adjustments for inland freight, commissions, indirect selling expenses, credit, and differences in packing costs. No other adjustments were claimed or allowed.

Best Information Available

Because we received no questionnaire responses from Tzitzic Tareta, Alisitos, Mision el Descanso, and Las Flores de Mexico, we have determined that they are uncooperative respondents. As a

result, in accordance with section 776(c) of the Act, we have determined that the use of BIA is appropriate. Whenever, as here, a company refuses to cooperate with the Department, or otherwise significantly impedes an antidumping proceeding, we use as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation or in prior administrative reviews, or (2) the highest rate found in this review for any firm for the same class or kind of merchandise. (*See Antifriction Bearings from France, et. al; Final Results of Review,* 58 FR 39729 (July 26, 1993).) As BIA, we assigned the rate of 39.95 percent, which is the second highest rate found for any Mexican flower producer from the prior reviews and the LTFV investigation. We have selected this rate because the highest rate found for any Mexican flower producer in prior reviews and the LTFV investigation, 264.43 percent, is not representative. This rate was due to a company's extraordinarily high business expenses during the review period resulting from investment activities which were uncharacteristic of the other reviewed companies. Therefore, we found it inappropriate to use this rate as BIA, both in prior reviews and in this review. (*See Notice of Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico,* 56 FR 29621, 29623 (June 28, 1991).)

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist for the period April 1, 1992, through March 31, 1993:

Manufacturer/exporter	Margin (percent)
Rancho el Aguaje	0.00
Rancho Guacatay	0.00
Rancho el Toro	0.00
Rancho del Pacifico	0.00
Rancho Daisy	*0.00
Visaflor	*0.00
Tzitzic Tareta	39.95
Rancho Mision el Descanso	39.95
Rancho Alisitos	39.95
Las Flores de Mexico	39.95

*No shipments subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments.

Because Guacatay received a preliminary margin of 39.95 percent for the 1991–1992 review period, we have preliminarily determined not to revoke the antidumping duty order with respect to Guacatay. (*See Notice of Preliminary Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico,* 60 FR 1209 (April 17, 1995).)

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the publication date of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the result of its analysis of issues raised in any such case briefs.

The following deposit requirements shall be effective for all shipments of the subject merchandise that are entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies shall be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate shall be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 18.28 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: September 15, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23883 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway, Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by three respondents and the petitioner, The Coalition for Fair Atlantic Salmon Trade (FAST), the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on fresh and chilled Atlantic salmon (salmon) from Norway. The review covers 24 exporters, and the period April 1, 1993, through March 31, 1994.

We preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumpting duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4195 or 482–3814, respectively.

Applicable Statute and Regulations

The Department is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1991, the Department published the antidumping duty order on salmon from Norway (56 FR 14920). The Department published a notice of ''Opportunity to Request Administrative Review'' on April 7, 1994 (59 FR 16615). On April 29, 1994, the petitioner, FAST, requested that we conduct an administrative review of 24 exporters, listed below, for the period April 1, 1993, through March 31, 1994. On April 29, 1994, three respondents asked to be reviewed: Norwegian Salmon A/S, Hallvard Leroy A/S, and Mowi A/S. We published a notice of ''Initiation of Antidumping and Countervailing Duty Administrative Review'' on May 12, 1994 (59 FR 24683). On June 29, 1994, the Department received timely requests from Hallvard Leroy A/S and Mowi A/S for withdrawal from this administrative review. In accordance with 19 CFR 353.22(a)(5), the Department terminated the review for Hallvard Leroy A/S, and Mowi A/S on September 16, 1994 (59 FR 47610).

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon (salmon). It encompasses the species of Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called ''king'' or ''quinnat''); Coho (''silver''); Sockeye (''redfish'' or ''blueback''); Humpback (''pink''); and Chum (''dog''). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.02.09. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage. This review covers 24 manufacturers/exporters and the period of review is April 1, 1993 through March 31, 1994.

No Shipments

There were 17 firms that reported they made no shipments of the subject merchandise during the period of review, which was verified with the U.S. Customs Service. The two firms which had not been reviewed previously will receive the ''all other rate'' of 23.80 percent. The 15 previously reviewed firms will continue to receive their current rates.

Best Information Available

Five exporters failed to respond to our questionnaire. Therefore, we based the margins for these firms on the best information otherwise available. In determining what to use as BIA, the Department uses the following two-tier hierarchy to separate cooperative firms from non-cooperative firms (see Final Results of Antidumping Administrative Review of Antifriction Bearings and Parts Thereof from France, *et al.*, 58 FR 39739, July 26, 1993):

1. When a company refuses to cooperate with the Department or otherwise significantly impedes these proceedings, we use as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation or prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperates with our requests for information and, substantially cooperates in verification, but fails to provide the information requested in a timely manner or in the form required, or was unable to substantiate it, we used as BIA the higher of (1) the highest rate ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.

We used first-tier BIA for five exporters, Artic Group, Fresh Marine Co. Ltd., Greig Norwegian Salmon, Norwegian Taste Company, and Victoria Seafood, which failed to respond to the Department's questionnaires. The rate we used was 31.81 percent, the highest rate from the less-than-fair-value (LTFV) investigation.

United States Price

In accordance with section 772(b) of the Act, the Department based USP on purchase price, because the merchandise was sold to unrelated U.S. purchasers prior to importation.

Purchase price is based on airpacked, c.i.f. prices to unrelated customers in the United States. We made adjustments, where applicable, for air freight, foreign inland freight, inland/marine insurance and Norwegian export duties. No other adjustments were claimed or allowed.

Foreign Market Value

In accordance with section 773(a) of the Act, the Department determined that home market sales did not constitute a viable market for calculating FMV. Therefore, in accordance with 19 CFR 353.49(b) of the Department's regulations, the Department chose sales to France as the basis of FMV. France is the largest third country market with merchandise most similar to that sold in the United States, based on information submitted by both Skaarfish and Norwegian Salmon. Because Skaarfish and Norwegian Salmon were found to have made sales at prices below the cost of production (COP) during the investigation, and in the first administrative review with respect to Skaarfish, the Department initiated a COP investigation for both companies in this administrative review. See memo to Holly A. Kuga from Laurie A. Lucksinger, June 21, 1994, on the record found in room B–099 at the Department.

In comparing third-country sales to COP, we used the production costs incurred by the fish farmers, the actual producers of the subject merchandise, to calculate the COP benchmark. The statute is concerned specifically with the cost of production of the merchandise, and Skaarfish and Norwegian Salmon do not produce the salmon that each sells. Department practice in such situations is to compare the production costs of the producer, in this case, the fishfarmers, plus the producer's selling, general and administrative expenses (SG&A), plus the SG&A of the seller (Skaarfish or Norwegian Salmon), to the seller's home market/third country sales to determine whether home market/third country sales were made below the COP. See Final Determination of Sales at less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway 56 FR 7661 (February 25, 1991); Final Results of Antidumping Duty Administrative Reviews: Oil Country Tubular Goods from Canada 56 FR 38408 (August 13, 1991 .

Sampling

Since there were approximately 50 salmon farmers that supplied Skaarfish during the period of review, the Department determined that sampling was both administratively necessary and methodologically appropriate to calculate a representative cost of producing the subject merchandise for purposes of this administrative review. Pursuant to Section 777A of the Act, on September 23, 1994, the Department issued a memorandum recommending the use of sampling. Based on comments

submitted by the petitioner and respondent, the Department determined that the most significant factor influencing the costs of producing salmon is farm location. We allocated the same across regions on the basis of each region's share of Skaarfish's total purchase during the POR.

To sample farms from each region, we assigned each farm points according to its percentage share of total volume of sales to Skaarfish. We used unequal selection probabilities because we are estimating a volume weighted-average of farm-specific costs. First, we assigned each farm points according to that farm's weighted-average percentage of sales volume to Skaarfish. One point was given for each ½ percent of sales to Skaarfish. Each farm was represented in the sample pool in proportion to the number of points it received. For example, a farm that comprised 25 percent of sales to Skaarfish would receive 50 points. In this way, the farm with a greater volume of sales had a greater likelihood of being selected than the farm with a smaller volume of sales to Skaarfish.

From the 50 farms, we made two selections from the northern region and thirteen selections from the southern region for a total of 15 selections. Of the 15 selections, two farms were chosen twice and one farm was chosen three times. We used a simple average for calculating the costs of the sample pool because we weighted each farm according to its share of sales to Skaarfish in selecting the sampled farms.

When a farm received a BIA rate as its COP, we did not exclude it from the sample pool. The elimination of non-responding farms from the sample would reward non-responding farms and could encourage non-compliance in future reviews. Moreover, it would impair the integrity of the sample because it would detract from the randomness of the results.

Since only nine fish farmers supplied respondent Norwegian Salmon during the POR, the Department determined that sampling was unnecessary for this firm. We sent COP questionnaires through Norwegian Salmon to all nine salmon farmers, three of which responded. Similarly, we sent COP questionnaires through Skaarfish to its eleven salmon farmers that were selected in our sample, seven of which responded. These responses, along with deficiency responses and verification results, were analyzed and relied upon in reaching these preliminary results of review.

We calculated the COP for each farm by summing all costs for the 1992 generation salmon. These costs include smolt, feed, labor, and overhead. We allocated these costs on a per kilogram basis over net production quantities. We then adjusted those costs to reflect losses in the processing stage. General and administrative expenses and net interest expenses incurred for the sale of salmon in 1993 were allocated to the salmon sold during the period of review.

Based on information gathered at verification we adjusted the farmers' data as appropriate.

For the farms that did not respond to the questionnaire, we used best information available (BIA) to determine their COP. This BIA was based on the highest COP we calculated for the responding farms supplying each exporter.

We calculated, for each exporter, a simple average COP of their farmers' individual COPs. We then added that exporter's selling and general and administrative expenses to the simple-averaged farmer COP. We calculated the total COP on a Norwegian Kroner per-kilogram basis.

Cost Test Results

Third country prices were compared to the calculated COP. We adjusted third country prices to reflect deductions for foreign inland freight, inland/marine insurance, third-country market credit, Norweigian export duties, brokerage and handling, freight, third-country market import duties, and third-country market warranties. Because there were no commissions in the third-country, we deducted indirect selling expenses in amounts not exceeding U.S. commissions. We determined that between 10 and 90 percent of sales of both firms were made at prices below total COP and over an extended period of time. Therefore, we disregarded those sales made below cost and compared the FMV of the remaining sales to the U.S. price.

Preliminary Results of Review

We have preliminarily determined that the following margins exist for the period April 1, 1993, through May 31, 1994:

	Percent
ABA A/S	[1] 31.81
Artic Group	[2] 31.81
Artic Products Norway A/S	[1] 31.81
Brodrene Sirevag A/S	[1] 23.80
Cocoon Ltd A/S	[1] 31.81
Delfa Norge A/S	[1] 31.81
Delimar A/S	([3])
Deli-Nor A/S	([3])
Fjord Trading Ltd. A/S	[1] 23.80
Fresh Marine Co. Ltd	[1] 31.81
Greig Norwegian Salmon	[2] 31.81
Harald Mowinckel A/S	[1] 23.80
Imperator de Norvegia	[1] 31.81
More Seafood A/S	[1] 31.81
Nils Willksen A/S	[1] 31.81
North Cape Fish A/S	[1] 31.81
Norwegian Salmon A/S	3.07
Norwegian Taste Company A/S	[2] 31.81
Olsen & Kvalheim A/S	[1] 23.80
Sekkingstad A/S	[1] 23.80
Skaarfish-Mowi A/S	1.58
Timar Seafood A/S	[1] 31.81
Victoria Seafood A/S	[2] 31.81
West Fish Ltd. A/S	[1] 23.80

[1] No shipments during the period; margin from the last administrative review.

[2] No response; highest margin from the original LTFV investigation.

[3] No shipments or sales subject to this review. The firm had no individual rate from any segment of this proceeding, so we are applying the all others rate from the LTFV investigation.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions concerning all respondents directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firms will be each firm's rate as established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters not previously reviewed will be 23.80 percent, the all other rate from the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of

publication, or the first workday thereafter. Case briefs or other written comments, from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of review, including the results of its analysis of issues raised in any such written comments or hearing.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 15, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23792 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DS–M

[(A–122–820); (A–122–822); (A–122–823)]

Amended Final Determinations of Sales at Less Than Fair Value and Antidumping Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada

AGENCY Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 11, 1995, the U.S.-Canada Binational Panel (''Panel'') affirmed the Department of Commerce's (''the Department'') remand determinations in these cases. On August 23, 1995, the Binational Secretariat, United States Section, published a notice of completion of panel review and noted that no request for an extraordinary challenge committee had been filed. (Notice of Completion of Panel Review, 60 FR 43773). As a result, the Department is amending the final determination of sales at less than fair value with respect to corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate from Canada. For all entries made on or after the date of publication of this notice, Commerce will direct the U.S. Customs Service (''Customs'') to require a cash deposit for each entry in an amount equal to the estimated antidumping duty margins as described in the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Patience or Jean Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1993, the Department published a notice of its Final Determination of Sales at Less than Fair Value covering, among other products, certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. 58 FR 37099.

The Department's determination subsequently was appealed to a U.S.-Canada Binational Panel, pursuant to Article 1904 of the United States-Canada Free Trade Agreement and title IV of the United States-Canada Free Trade Implementation Act of 1988, 19 U.S.C. 1516a(g)(1989). On April 1, 1994, the Department published an amended determination pursuant to an order from the Panel, correcting certain ministerial errors. 59 FR 15373. On October 31, 1994 and May 1, 1995, the Panel remanded the determination so that the Department could address certain issues regarding the calculation of the weighted-average dumping margins for certain respondents in this proceeding. On January 30, 1995 and May 31, 1995, the Department issued its final remand determinations with recalculated estimated margins. The Panel affirmed the Department's remand determination on July 11, 1995. No request for an extraordinary challenge has been filed and a Notice of Completion of Panel Review has been published by the Binational Secretariat.

Suspension of Liquidation

Since the panel proceedings are now final, we are directing Customs to require a cash deposit in an amount equal to:

Producer/manufacturer/exporter	Weighted-average margin percentage
Corrosion-Resistant Steel Flat Products:	
Dofasco	11.71
Stelco	22.70
All Others	18.71
Cut-to-Length Carbon Steel Plate:	
IPSCO	0.06
Stelco	68.70
All Others	61.88

We will instruct Customs to continue to suspend liquidation and collect cash deposits at the above rates for all entries of corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate from Canada entered or withdrawn from warehouse for consumption, on or after the date of publication of this notice. Because IPSCO's rate is *de minimis,* IPSCO is excluded from the antidumping duty order on plate from Canada. We will instruct Customs to cease suspension of liquidation and collection of cash deposits and to liquidate all suspended entries of IPSCO plate without regard to antidumping duties.

Dated: September 15, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23793 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–601]

Brass Sheet and Strip From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 27, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from Canada. The review period is January 1, 1992, through December 31, 1992. The review covers one manufacturer/exporter.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed our results from those presented in our preliminary results.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or John Kugelman, Office of Antidumping Compliance, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4366 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 1995, the Department published in the Federal Register (60 FR 20670) the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from Canada (52 FR 1217, January 12, 1987).

Applicable Statute and Regulations

The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations refer to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by this review are brass sheet and strip, other than leaded and tin brass sheet and strip. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000. Products whose chemical composition is defined by other C.D.A. or U.N.S. series are not covered by this order.

The physical dimensions of the products covered by this review are brass sheet and strip of solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thicknesses or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included.

During the review period such merchandise was classifiable under Harmonized Tariff Schedule (HTS) subheadings 7409.21.00 and 7409.29.00. Although the HTS subheadings are provided for convenience and for Customs purposes, the written description of the scope of this order remains dispositve.

This review covers one Canadian manufacturer/exporter, Wolverine Tube (Canada) Inc. (Wolverine), and the period January 1, 1992 through December 31, 1992.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. The petitioners in this case are Outokumpu American Brass, Hussey Copper Ltd., The Miller Company, Olin Corporation-Brass Group, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, International Union-Allied Industrial Workers of America (AFL–CIO), Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL–CIO/CLC). Petitioners timely submitted a case brief. Respondent Wolverine did not file a case brief and none of the interested parties submitted a rebuttal brief.

Comment 1: Petitioners agree with the Department's use of their submitted fabrication and packing cost information as best information available in calculating Wolverine's cost of production (COP) and constructed value (CV). However, petitioners argue that the Department should adjust the daily metal prices submitted by Wolverine to include yield losses, transportation costs, and Wolverine's use of virgin metals and scrap.

Department's Position: We agree in principle with the petitioners' comment. However, since petitioners used Wolverine's unadjusted metal prices in their August 27, 1993 allegation of sales below cost and because neither petitioners nor respondent provided information concerning yield losses, transportation costs, or Wolverine's use of virgin metals and scrap in their sales-below-cost allegation, we have no information which would enable us to quantify these items. Therefore, we have continued to use the respondent's submitted metal prices, unadjusted for yield losses, transportation costs, and utilization of virgin metals and scrap, as cost of materials.

Comment 2: Petitioners state that there is no indication that Wolverine's submitted metal prices include the reported Goods & Services Tax (GST) of seven percent. Petitioners argue that the Department incorrectly compared GST-exclusive COPs to GST-inclusive home market prices, thus understating the number of home market sales below the cost of production.

Department's Position: We disagree. Line 109 of the computer program defines *net price*, which we used only for price-to-price comparisons, not the sales-below-cost test. In line 133 of the computer program we compared a GST-exclusive *unit price* to a GST-exclusive COP.

Comment 3: Petitioners contend that because the Department used in its COP analysis U.S. fabrication costs submitted by the petitioners as best information available, we should have adjusted these costs for the differences between U.S. and Canadian labor costs.

Department's Position: We agree with the petitioners. In these final results, we have accounted for such differences by using Canadian labor costs based on the U.S. Bureau of Labor Statistics (BLS) Hourly Compensation Costs for Nonferrous Metal Manufacturing in Canada in 1992, rather than the 1991 figures submitted by the petitioners in their August 27, 1993 sales-below-cost allegation.

Comment 4: Petitioners argue that the Department should adjust Wolverine's general and administrative (G&A) expenses to include costs associated with Wolverine's closure of its New Westminster facility and Wolverine's amortization costs.

Department's Position: It is the Department practice to include in G&A those expenses relating to factory closure, even if the factory does not produce subject merchandise, because those expenses are a general cost of doing business. (See Silicon Metal From Argentina: Final Results of Administrative Review, 58 FR 65336 (December 14, 1993) and Sweaters Wholly or in Chief Weight of Man-made Fiber From Taiwan: Final Determination of Sales at Less Than Fair Value, 55 FR 34585 (August 23, 1990)). In its Supplemental Cost Response, submitted on April 28, 1994, Wolverine stated that it did not include the New Westminster expenses in its allocation of G&A in the previously submitted cost data. Therefore, we have allocated a portion of the New Westminster factory closure expenses to Wolverine's Fergus, Ontario, Canada facility (which is the sole Wolverine factory that produces brass sheet and strip), and have added that portion to our calculation of G&A.

With regard to Wolverine's amortization expense, we saw no evidence and the petitioner has provided no basis or grounds to believe that the G&A expense reported for the Fergus facility does not include a portion of Wolverine's corporate amortization expense. For this reason, we have not altered the G&A expense, other than for the closure expenses discussed above.

Final Results of the Review

As a result of our analysis of the comments received, we determine that the following margin exists for the period January 1, 1992 through December 31, 1992:

Manufacturer/exporter	Percent margin
Wolverine	25.49

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price (USP) and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of review for all shipment of Canadian brass sheet and strip entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 8.10 percent, the ''all others'' rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23794 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DS–M

USEPA, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 95–017. *Applicant:* USEPA, Central Regional Laboratory, Chicago, IL 60605. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 60 FR 19571, April 19, 1995. *Reasons:* The foreign instrument provides: (1) a detection limit of no greater than 10 ng/L and (2) broad dynamic range up to 10^8 more concentrated than detection limits for Ag, Be, and Tl. *Advice Received From:* The National Institutes of Health, July 10, 1995.

Docket Number: 95–018. *Applicant:* Florida State University, Tallahassee, FL 32306. *Instrument:* Mass Spectrometer, Model 262. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 60 FR 19571, April 19, 1995. *Reasons:* The foreign instrument provides: (1) high intensity, high sensitivity thermal ionization source, (2) multi-element Faraday cup ion detection system and (3) resolution >500 (10% valley definition) with abundance sensitivity of ≤2PPM at 237 1u (U). *Advice Received From:* The National Institutes of Health, July 10, 1995.

Docket Number: 95–019. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543. *Instrument:* Mass Spectrometer, Model IMS 1270. *Manufacturer:* Cameca Geologie, France. *Intended Use:* See notice at 60 FR 19571, April 19, 1995. *Reasons:* The foreign instrument provides: (1) high mass resolution up to 50 000 (2) direct ion imaging and (3) ion microprobe capabilities. *Advice Received From:* The National Institutes of Health, July 10, 1995.

Docket Number: 95–033. *Applicant:* University of South Carolina, Columbia, SC 29208. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 60 FR 29826, June 6, 1995. *Reasons:* The foreign instrument provides: (1) an element analyzer with sample size capability of 1 mg to <30 mg, (2) absolute sensitivity of 1100 molecules of CO_2 per m/z 44 ion, and (3) data acquisition and integration of the thermal conductivity signal from the Elemental Analyzer. *Advice Received From:* The National Institutes of Health, July 12, 1995.

Docket Number: 95–048. *Applicant:* University of Nebraska-Lincoln, Lincoln, NE 68588-0111. *Instrument:* Integrated Sensors, Model MD100. *Manufacturer:* Integrated Sensors Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 35552, July 10, 1995. *Reasons:* The foreign instrument provides an array of 116 detectors, each having a built-in microchip containing discriminators and amplifiers, with low noise and crosstalk and high (linear) spatial resolution for x-ray analysis of ionized gases. *Advice Received From:* The National Institute of Standards and Technology, August 31, 1995.

Docket Number: 95–050. *Applicant:* North Carolina State University, Raleigh, NC 27695-7212. *Instrument:* Mass Spectrometer, Model IMS-6f. *Manufacturer:* Cameca Instruments, France. *Intended Use:* See notice at 60 FR 35552, July 10, 1995. *Reasons:* The foreign instrument provides electrostatic sector/magnetic sector design for: (1) sensitivity to 7.0×10^{-12} atoms/cm^2 for B in Si, (2) mass resolving power to 3.0×10^{13} atoms/cm^2 for P in Si and (3) dynamic depth profiling capability. *Advice Received From:* The National Institute of Standards and Technology, August 29, 1995.

Docket Number: 95–051. *Applicant:* National Renewable Energy Laboratory, Golden, CO 80401. *Instrument:* Sonic Anemometer/Thermometer. *Manufacturer:* Kaijo-Denki, Co. Inc., Ltd., Japan. *Intended Use:* See notice at 60 FR 37051, July 19, 1995. *Reasons:* The foreign instrument provides: (1) wind speed capability to 60 m/s, (2) 10 Hz bandwidth and (3) resolution to 0.005 m/s for measurement of small-scale atmospheric turbulence. *Advice Received From:* The National Oceanic

and Atmospheric Administration, August 24, 1995.

The National Institutes of Health, National Institute of Standards and Technology and National Oceanic and Atmospheric Administration advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–23886 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DS–F

Woods Hole Oceanographic Institution, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–059. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543-1522. *Instrument:* Noble Gas Mass Spectrometer, Model MAP 215-50. *Manufacturer:* Mass Analyzer Products, United Kingdom. *Intended Use:* See notice at 60 FR 39711, August 3, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) a background of less than 5.0×10^{-14} cm^3 STP for M/e 36 and less than 10^{-15} cm^3 STP for M/e 132 and (2) capability for simultaneous measurement of 40 Ar and 36 Ar.

These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–23887 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DS–F

[A–583–605]

Carbon Steel Butt-Weld Pipe Fittings From Taiwan; Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 22, 1994, The Department of Commerce (the Department) published the preliminary results of its 1992–1993 administrative review of the antidumping duty order on carbon steel butt-weld pipe fittings from Taiwan. The review covers four manufacturers/exporters of the subject merchandise to the United States during the period December 1, 1992, through November 30, 1993. Our review indicates the existence of dumping margins.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have adjusted the margins of two manufacturers for these final results.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Carlo G. Cavagna or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1986, the Department published in the Federal Register (51 FR 45152) the antidumping duty order on carbon steel butt-weld pipe fittings from Taiwan. On November 26, 1993, the Department published (58 FR 62327) a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the period December 1, 1992, through November 30, 1993. The Department received a timely request from the petitioner, the U.S. Butt-Weld Fittings Committee, to review C.M. Pipe Fitting Manufacturing Co., Ltd. (C.M.), Rigid Industries Co., Ltd. (Rigid), Chup Hsin Enterprises (Chup Hsin), and Gei Bey Corporation (Gei Bey). The Department initiated an administrative review on January 18, 1994 (59 FR 2593).

On December 22, 1994, the Department published in the Federal Register (59 FR 66001) the preliminary results of its administrative review. The period of review (POR) covers December 1, 1992, through November 30, 1993.

Applicable Statute and Regulations

The Department has completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by this review are shipments of carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, and caps, and if forged, have been advanced after forging. These advancements may include one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping, or painting.

Carbon steel butt-weld pipe fittings are currently classifiable under Harmonized Tariff Schedule (HTS) item number 7307.93.3000. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information otherwise available (BIA) is appropriate for certain firms. The Department's regulations provide that we may take into account whether a party refuses to provide information (19 CFR 353.37(b)). For purposes of these reviews, we have used the most adverse BIA—generally, the highest rate for any company for this same class or kind of merchandise from this or any prior segment of the proceeding—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et. al.; Final Results of Antidumping Duty Administrative Review, 56 FR 31692, 31704 (July 11,

1991); *see also Allied-Signal Aerospace Co.* v. *United States* 996 F.2d 1185 (Fed. Cir. 1993).

Because Chup Hsin and Gei Bey failed to respond to the Department's questionnaire, we have used the highest rate ever found in this proceeding to establish their margins. This rate is 87.30 percent, which was also used for these two firms in the LTFV investigation when they failed to respond in that stage of the proceeding. Chup Hsin and Gei Bey did not comment on the use of BIA in the preliminary results of this administrative review.

Analysis of Comments Received

We received case and rebuttal briefs from C.M., Rigid, and from the petitioner, the U.S. Butt-Weld Fittings Committee. These comments are summarized and analyzed below.

General Comments

Comment 1: C.M. and Rigid contend that, for the preliminary results, the Department incorrectly deducted U.S. commissions and U.S. direct selling expenses from U.S. price (USP), rather than adding them to foreign market value (FMV).

Department's Position: We agree with C.M. and Rigid that U.S. selling expenses and commissions should not have been deducted from USP, and instead should have been added to FMV. We have corrected our error for both C.M. and Rigid.

Comment 2: Petitioner argues that no adjustment for the 5% Taiwan VAT was made for any margin calculations involving constructed value. As a result, Petitioner concludes that the preliminary dumping margins calculated by the Department are understated. Rigid responds that the Department made the correct VAT adjustments for the preliminary results.

Department's Position: We disagree with Petitioner. The Department does not adjust for VAT in comparisons involving constructed value. See, *e.g., Avesta Sheffield, Inc.* v. *United States,* Slip Op. 94–53, at 2 (March 31, 1994). However, upon review of the preliminary margin programs for Rigid and C.M., it appears that a VAT adjustment was made to USP in cases where FMV was based on constructed value. For these final results, we have not made a VAT adjustment to either USP or FMV where FMV is based on constructed value.

Comment 3: Petitioner asserts that, for the preliminary results, the Department failed to deduct indirect selling expenses from home market price (HMP) for the purposes of conducting the below cost test. Petitioner suggests that the Department should deduct indirect selling expenses from HMP and total cost of production (COP). Rigid responds that because indirect selling expenses are built into its reported COP, it is not necessary to deduct them from HMP.

Department's Position: We disagree with Petitioner. As noted by Rigid, indirect selling expenses are included in both the COP and HMP reported by Rigid and C.M. (See C.M. Response to Section VIII of the Questionnaire (August 10, 1994), at 24 and at exhibit D–13; see also Rigid Response to the Questionnaire (April 6, 1994), at 42 and at exhibit 13.) Therefore, it is not necessary to deduct indirect selling expenses from either HMP or COP to ensure that an accurate comparison is being made.

Comments Regarding C.M. Pipe Fitting Manufacturing Co.

Comment 4: C.M. alleges that the Department's margin and cost programs for the preliminary results incorrectly deleted several home-market sales from C.M.'s home market database due to a programming error.

Department's Position: We agree with C.M. and have corrected this error.

Comment 5: C.M. argues that the Department's margin program for the preliminary results incorrectly calculated imputed credit for U.S. sales based on sale dates, rather than shipment dates.

Department's Position: We agree, and have recalculated C.M.'s U.S. imputed credit expenses based on shipment dates.

Comment 6: Petitioner argues that C.M.'s preliminary margin program shows that the Department was not able to calculate margins for a small number of U.S. sales because they could not be matched to an FMV. Petitioner states that C.M.'s failure to report FMVs for these sales warrants the application of BIA to these sales.

Department's Position: We agree with Petitioner that C.M.'s preliminary margin program did not calculate margins for a small number of U.S. sales. However, we disagree that the use of BIA is warranted. The problem outlined by Petitioner was caused by a programming error in C.M.'s preliminary margin program (see *Comment 4*) and has been corrected for these final results.

Comment Regarding Rigid Industries:

Comment 7: Petitioner argues that the Department's preliminary margin program failed to properly adjust FMV for the 5% Taiwan value-added tax (VAT) in price-to-price comparisons. Rigid responds that the Department's Preliminary Results Analysis Memorandum states that both USP and FMV were adjusted for the 5% and that no other adjustment is necessary.

Department's Position: Although the Preliminary Results Analysis Memorandum states that both USP and FMV were adjusted for the 5% Taiwan VAT (see Memorandum to the File, December 27, 1994), only USP was adjusted in the preliminary margin program. We have corrected this error for the final results by adjusting both USP and FMV for the 5% VAT in price-to-price comparisons, in accordance with our practice as outlined in Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value, 59 FR 31204 (June 17, 1994).

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period December 1, 1992, through November 30, 1993:

Manufacturer/exporter	Percent margin
Chup Hsin Enterprises	87.30
C.M. Pipe Fittings	5.55
Gei Bey Corporation	87.30
Rigid Industries	4.38
All Others	49.46

Interested parties may request disclosure within five days of the date of publication of this notice.

The Department shall instruct the U.S. Customs Service to liquidate all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions with respect to each exporter.

Furthermore, the following deposit requirements will be effective for all shipments of carbon steel butt-weld pipe fittings entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be those rates established in these final results; (2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, but the manufacturer is, the cash deposit rate will be the rate established in this review for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rates will be 49.46%, the all other rate established in the LTFV investigation (51 FR 37772). These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is subject to sanction.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23790 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

September 22, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the Federal Register on August 2, 1995 (60 FR 39366) announces that if no solution is agreed upon in consultations between the Governments of the United States and Costa Rica on Categories 351/651, the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 170,979 dozen for the twelve-month period beginning on June 29, 1995 and extending through June 28, 1996.

Inasmuch as no agreement was reached during the consultations held June 1–2 and August 17–18, 1995 on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 351/651 for the period beginning on June 29, 1995 and extending through June 28, 1996 at a level of 170,979 dozen.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 351/651. Should such a solution be reached in consultations with the Government of Costa Rica, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 22, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 26, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 351/651 produced or manufactured in Costa Rica and exported during the period beginning on June 29, 1995 and extending through June 28, 1996, in excess of 170,979 dozen [1].

Textile products in Categories 351/651 which have been exported to the United States prior to June 29, 1995 shall not be subject to this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23936 Filed 9–25–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 27, 1995.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a

[1] The limits have not been adjusted to account for any imports exported after June 28, 1995.

telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 20, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Revision
Title: Student Assistance General Provisions
Frequency: Varies by Section
Affected Public: Individuals or households; Business or other for-profit; Not for Profit institutions
Reporting Burden:
Responses: 93,969
Burden Hours: 174,390
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: These regulations implement of default prevention measures in the Direct Loan Program and enhance the Secretary's Default Reduction initiation in the FFEL program.

Office of Elementary and Secondary Education

Type of Review: Revision
Title: Migrant Education Interstate and Intrastate Coordination Program
Frequency: Annually
Affected Public: Not for Profit institutions; State, Local or Tribal Governments
Reporting Burden:
Responses: 45
Burden Hours:2704
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: SEAs, LEAs, institutions of higher education, and other public and private nonprofit organizations are eligible to submit an application to the Secretary for Federal Assistance to design and operate special projects to improve interstate and intrastate migrant education program coordination activities.

[FR Doc. 95–23769 Filed 9–25–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Notice of Floodplain and Wetlands Involvement for the Anderson Ranch Wildlife Management Plan

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: BPA proposes to fund the development and implementation of the Anderson Ranch Wildlife Management Plan in a cooperative effort with the Idaho Department of Fish and Game, the U.S. Fish and Wildlife Service, U.S. Forest Service, U.S. Bureau of Reclamation, U.S. Bureau of Land Management, the Shoshone-Bannock Tribes, and the Shoshone-Paiute Tribes. The proposed action would allow the sponsors to secure long-term agreements with public and private landowners to protect and enhance a variety of wetland and riparian habitats in the Anderson Ranch Wildlife Management area within various parts of Camas, Elmore, Gooding, Lincoln, Blaine, Washington, and Ada Counties, Idaho.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

The assessment will be included in the environmental assessment (EA) being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the EA.

DATE: Comments are due to the address below no later than, October 16, 1995.

FOR FURTHER INFORMATION, CONTACT: Robert Beraud, ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621; phone number 503–230–3599; fax number 503–230–5699; or Robert Shank, ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621; phone number 503–230–5115.

SUPPLEMENTARY INFORMATION: BPA proposes to fund activities that would enable the sponsors to replace 9,620 habitat units lost as a result of the construction and operation of Anderson Ranch Dam and reservoir and to conduct long-term wildlife management activities within the boundaries of the Anderson Ranch Wildlife Management Plan area of approximately 9,211 hectares (22,760 acres).

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on September 18, 1995.

Roberta M. Watson,

NEPA Compliance Officer, Office of Environment/Fish and Wildlife.

[FR Doc. 95–23834 Filed 9–25–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Fusion Energy Advisory Committee; Notice of Renewal

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) Public Law 92–463, and section 101–6.1015, title 41

Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Fusion Energy Advisory Committee has been renewed for a two-year period beginning September 1995.

The Committee will provide advice to the Department on long-range plans, priorities, and strategies for demonstrating the scientific and technological feasibility of fusion energy.

The renewal of the Fusion Energy Advisory Committee has been determined to be essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the FACA, the Department of Energy Organization Act (Public Law 95–91), the GSA regulation on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Murphy Samuel, U.S. Department of Energy, HR–62, FORS, Washington, DC 20585, Telephone: (202) 586–3279.

Issued in Washington, DC on September 19, 1995.

Joanne Whitman,

Deputy Advisory Committee Management Officer.

[FR Doc. 95–23740 Filed 9–25–95; 8:45 am]

BILLING CODE 6450–01–M

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada.

DATE: Wednesday, October 4, 1995: 5:30 p.m.–9:30 p.m.

PLACE: Community College of Southern Nevada, Cheyenne Campus, Highdesert Conference and Training Center, Room 1422, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. DOE, Nevada Operations Office, AMEM, P.O. Box 98518, Las Vegas, NV 89193–8518, ph. 702–295–0197 fax 702–295–1810.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Wednesday, October 4, 1995
7:00 p.m.
- Call to Order
- Review Agenda
- Minutes Acceptance
- Financial Report
- Correspondence
- Reports from Committees, Delegates and Representatives
- Unfinished Business
- New Business
- Evaluation of Board and Environmental Restoration and Waste Management Programs
- Announcements

10:00 p.m.
- Adjournment

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting Wednesday, October 4, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the Federal Register notice is being published less than fifteen days before the date of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC, on September 21, 1995

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–23836 Filed 9–25–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Department of Energy/Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Department of Energy/Los Alamos National Laboratory.

DATES: Tuesday, October 10, 1995: 6:30 pm–10:00—7:00 pm to 8:00 pm (public comment session).

PLACE: Santa Fe Community College, Jemez 1, Richland Road, Santa Fe, New Mexico 87505.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Roybal, EM SSAB, Department of Energy/Los Alamos National Laboratory, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800)753–8970, or (505)753–8970.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Tuesday, October 10, 1995

6:30 PM	Call to Order and Welcome
7:00 PM	Input from the Public
8:00 PM	Sub-Committee Reports
10:00 PM	Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Lisa Roybal, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This

notice is being published less than 15 days before the date of meeting due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC, on September 21, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–23837 Filed 9–25–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. PP–108]

Application for Presidential Permit; Arizona Public Service Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Arizona Public Service Company (APS) has applied for a Presidential Permit in order to construct a new transmission facility at the U.S. border with Mexico.

DATES: Comments, protests or requests to intervene must be submitted on or before October 26, 1995.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Warren E. Williams (Program Office) 202–586–9629 or Mike Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 12038. Exports of electricity from the United States to a foreign country are also regulated and require authorization under section 202(e) of the Federal Power Act.

On June 22, 1995, APS filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for a Presidential permit. This application has been docketed as PP–108. In its application, APS proposes to construct, connect, operate and maintain facilities for the transmission of electricity between the United States and Mexico from a point near San Luis, Yuma County, Arizona, to the international border adjacent to San Luis, Sonora, Mexico. APS proposes to build a new 34.5 kV line running south 1.3 miles from the APS San Luis Substation along the east side of Avenue H1/2 to Avenue A, where it will shift to the west side of Avenue H1/2 and continue south to a point immediately north of the International Bountary and Water Commission 60-foot wide right-of-way. The line will then turn northwesterly and run parallel to the border for 1.5 miles, then turn south and intersect the international border at latitude 32° 29′ 8.937″ north and longitude 114° 47′ 04.001″ west. APS has named this proposed facility the ''Canal Line.''

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protest also should be filed directly with: Dennis Beals, Manager, Bulk Power Trading & Customer Services, Arizona Public Service Company, P.O. Box 53999, Station 9860, Phoenix, AZ 85072–3999 and Bruce A. Gardner, Esq., Senior Attorney, Arizona Public Service Company, P.O. Box 53999, Station 9820, Phoenix, AZ 85072–3999.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on the application for Presidential permit contained in docket PP–108 after a determination is made by the DOE that the proposed action is in the public interest and will not adversely impact on the reliability of the U.S. electric power supply system.

Before a Presidential permit or electricity export authorization may be issued or amended, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on September 21, 1995.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–23835 Filed 9–25–95; 8:45 am]

BILLING CODE 6450–01–P

Certification of the Radiological Condition of the Wayne Site Vicinity Properties in Wayne, NJ, 1993

AGENCY: Department of Energy.

ACTION: Notice of Certification.

SUMMARY: The Department of Energy (DOE) has completed remedial action to decontaminate eight vicinity properties and portions of the Peck Avenue right-of-way at the Wayne Site in Wayne, New Jersey. These properties were found to contain quantities of radioactive material from activities conducted at the former W. R. Grace and Company facility in Wayne. Radiological surveys show that the properties now meet applicable requirements for unrestricted use. The docket relating to the remedial action is available for inspection and copying at the following addresses.

ADDRESSES: Public Reading Room, Room 1E–190, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Public Document Room, Oak Ridge Operations Office, U.S. Department of Energy, Oak Ridge, Tennessee 37831

DOE Wayne Information Center, 868 Black Oak Ridge Road, Wayne, New Jersey 07470

FOR FURTHER INFORMATION CONTACT: James W. Wagoner II, Director, Off-Site/Savannah River Program Division, Office of Eastern Area Programs, Office of Environmental Restoration (EM–421),

U.S. Department of Energy, Washington, D.C. 20585, (301) 903–2531 Fax: (301) 903–2461.

SUPPLEMENTARY INFORMATION: The DOE, Office of Environmental Management, has conducted remedial action at eight vicinity properties and portions of the Peck Avenue right-of-way at the Wayne Site in Wayne, New Jersey, as part of the Formerly Utilized Sites Remedial Action Program (FUSRAP). The objective of the program is to identify and remediate or otherwise control sites where residual radioactive contamination remains from activities carried out under contract to the Manhattan Engineer District/Atomic Energy Commission during the early years of the nation's atomic energy program or from commercial operations. Congress assigned responsibility for the Wayne site to DOE in 1984 under the Energy and Water Development Appropriations Act for 1984, Public Law Number 98–50; the site was then assigned to FUSRAP.

From 1948 to 1971, the former W. R. Grace facility, located at 868 Black Oak Ridge Road, received and processed monazite sands, an ore rich in radioactive material, from several sources throughout the world. U.S. Department of Commerce records indicate that substantial quantities of the sands were received and processed at the site.

The now-abandoned Pompton Plains railroad spur of the New York, Susquehanna, and Western Railroad was used to convey the monazite sands to the W. R. Grace facility. The railroad spur, located approximately 1 mile west of the facility, was the point where the source material (i.e., the monazite sands) was transferred from rail cars to trucks for delivery to the W. R. Grace processing plant. The bags of monazite sand were placed on pallets on the trucks, which were then driven west down Peck Avenue to the Pompton Turnpike, south to the Pompton Plains Cross Road, and east to the W. R. Grace facility. The portion of the property where Peck Avenue abuts the railroad spur became radioactively contaminated by spills of unprocessed monazite sands that occurred during transfer of the material from rail cars to trucks.

The radioactive contamination and associated metals contamination were confined primarily to the area used for unloading monazite sands. However, radiological surveys of nearby residential properties along Peck Avenue indicate that some of this material either migrated westward on Peck Avenue during floods or was physically relocated for use as backfill or landscape material. Radiological surveys also indicated that the residential property adjacent to the former W. R. Grace facility contained radioactive contamination above cleanup guidelines. This property is suspected to have become contaminated either by surface water runoff during operations at the former processing facility, or by physical relocation of the material from the processing plant.

Post-remedial action surveys have demonstrated, and DOE has certified, that the subject properties are in compliance with DOE radiological decontamination criteria and standards established under DOE Order 5400.5 to protect members of the general public and occupants of the properties, and to ensure that future use by the general public or site occupants of the properties will result in no radiological exposure above applicable radiological guidelines.

These findings are supported by the DOE Certification Docket for the Remedial Action Performed at the Wayne Site Vicinity Properties in Wayne, New Jersey, 1993. Accordingly, these properties are released from FUSRAP.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays) in the DOE Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Copies of the certification docket will also be available in the DOE Public Document Room, U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge, Tennessee 37831 and at the DOE Wayne Information Center, 868 Black Oak Ridge Road, Wayne, New Jersey 07470.

DOE, through its Oak Ridge Operations Office, has issued the following statement:

Statement of Certification: Wayne Site Vicinity Properties in Wayne, New Jersey

DOE Oak Ridge Operations Office, Former Sites Restoration Division, has reviewed and analyzed the radiological data obtained following remedial action at the Wayne site vicinity properties. Based on analysis of all data collected, DOE certifies that the following properties are in compliance with DOE radiological decontamination criteria and standards. This certification of compliance provides assurance that future use of the properties will result in no radiological exposure above applicable guidelines established to protect members of the general public and occupants of the properties.

Property owned by Township of Pequannock, Peck Avenue Right of Way (no deed reference), Passaic County, New Jersey

Property owned by Ms. Bertha Barrett, Parcel 238/23, Deed/Plat Book 3749, Page 313, Passaic County, New Jersey

Property owned by Mr. Frederick M. Vicine, Parcel 22–238, Deed/Plat Book G67, Page 392, Passaic County, New Jersey

Property owned by Mr. Michael Galiano, Parcel 21/238, Deed/Plat Book 045, Page 447, Passaic County, New Jersey

Property owned by Ms. Linda S. Perry, Parcel 6–237, Deed/Plat Book 2915, Page 707, Passaic County, New Jersey

Property owned by Mr. Charles A. Lundy, Parcel 20–238, Deed/Plat Book 3441, Page 310, Passaic County, New Jersey

Property owned by Mr. John Rotchford, Parcel 19–238, Deed/Plat Book 3610, Page 055, Passaic County, New Jersey

Property owned by New York, Susquehanna, and Western Railway Corp., Parcel 200/4, Deed/Plat Book EB3493, Page 305, Passaic County, New Jersey

Property owned by Mrs. Jean Konecny, 898 Black Oak Ridge Road, Wayne (Morris County), New Jersey

Issued in Washington, D.C., on September 19, 1995.

James M. Owendoff,

Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 95–23833 Filed 9–25–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ST95–3148–000 et al.]

Florida Gas Transmission Company; Notice of Self-Implementing Transactions

September 20, 1995.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental Shelf Lands Act.[1]

The ''Recipient'' column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

The ''Part 284 Subpart'' column in the following table indicates the type of transaction.

A ''B'' indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to Section 284.102 of the Commission's Regulations and Section 311(a)(1) of the NGPA.

A ''C'' indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.122 of the Commission's Regulations and Section 311(a)(2) of the NGPA.

A ''D'' indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An ''E'' indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's Regulations and Section 312 of the NGPA.

A ''G'' indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under Section 284.221 of the Commission's Regulations.

A ''G-I'' indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's Regulations.

A ''G-S'' indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under Section 284.221 of the Commission's Regulations.

A ''G-LT'' or ''G-LS'' indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under Section 284.224 of the Commission's Regulations.

A ''G-HT'' or ''G-HS'' indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under Section 284.224 of the Commission's Regulations.

A ''K'' indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.303 of the Commission's Regulations.

A ''K-S'' indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to Section 284.303 of the Commission's Regulations.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23767 Filed 9–25–95; 8:45 am]

BILLING CODE 6717–01–P

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–3148	FLORIDA GAS TRANSMISSION CO.	REEDY CREEK IMPROVEMENT DISTRICT.	08–01–95	G–S	7,035	N	F	07–01–95	03–01–15
ST95–3149	FLORIDA GAS TRANSMISSION CO.	TORCH ENERGY MARKETING, INC.	08–01–95	G–S	75,000	N	I	07–02–95	INDEF.
ST95–3150	FLORIDA GAS TRANSMISSION CO.	U.S. GYPSUM CO ..	08–01–95	G–S	15,000	N	I	07–01–95	INDEF.
ST95–3151	PNM GAS SERVICES.	TRANSWESTERN NATURAL GAS CO.	08–01–95	G–HT	20,000	N	F	07–01–95	10–31–95
ST95–3152	PNM GAS SERVICES.	EL PASO NATURAL GAS CO.	08–02–95	G–HT	25,000	N	I	07–02–95	07–01–00
ST95–3153	NORTHERN NATURAL GAS CO.	CENERGY, INC	08–02–95	G–S	8,010	N	F	05–01–95	05–31–95
ST95–3154	NORTHERN NATURAL GAS CO.	CENERGY, INC	08–02–95	G–S	12,000	N	F	05–01–95	05–31–95
ST95–3155	NORTHERN NATURAL GAS CO.	CIBOLA CORP	08–02–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–3156	TRANSOK, INC	ANR PIPELINE CO., ET AL.	08–02–95	C	1,000	N	I	07–18–95	INDEF.
ST95–3157	TRANSOK, INC	ANR PIPELINE CO., ET AL.	08–02–95	C	1,000	N	I	07–20–95	INDEF.
ST95–3158	TEXAS GAS TRANSMISSION CORP.	NOBLE GAS MARKETING, INC.	08–02–95	G–S	25,000	N	I	07–13–95	INDEF.
ST95–3159	KERN RIVER GAS TRANSMISSION CO.	DGS TRADING, INC	08–03–95	G–S	100,000	N	I	07–12–95	INDEF.
ST95–3160	EL PASO NATURAL GAS CO.	VALERO GAS MARKETING, L.P.	08–03–95	G–S	206,000	N	I	07–07–95	INDEF.
ST95–3161	EL PASO NATURAL GAS CO.	ASSOCIATED GAS SERVICES, INC.	08–03–95	G–S	100,000	N	I	07–10–95	INDEF.
ST95–3162	WILLIAMS NATURAL GAS CO.	ENERGY DYNAMICS, INC.	08–04–95	G–S	10,000	N	I	08–01–95	07–01–96
ST95–3163	FLORIDA GAS TRANSMISSION CO.	ORANGE COGENERATION LIMITED PART.	08–04–95	G–S	9,850	N	F	07–01–95	03–01–16

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–3164	EL PASO NATURAL GAS CO.	NORAM ENERGY SERVICES, INC.	08–04–95	G–S	206,000	N	I	07–21–95	INDEF.
ST95–3165	ROCKY MOUNTAIN NATURAL GAS CO.	NORTHWEST PIPELINE CORP., ET AL.	08–03–95	G–HT	5,000	N	I	05–09–95	INDEF.
ST95–3166	NORTHERN NATURAL GAS CO.	TEXPAR ENERGY, INC.	08–07–95	G–S	5,000	N	I	07–01–95	INDEF.
ST95–3167	NORTHERN NATURAL GAS CO.	CONTINENTAL NATURAL GAS, INC.	08–07–95	G–S	10,000	N	F	04–01–95	04–30–95
ST95–3168	NORTHERN NATURAL GAS CO.	MOBIL NATURAL GAS, INC.	08–07–95	G–S	20,000	N	F	05–01–95	05–31–95
ST95–3169	NORTHERN NATURAL GAS CO.	WESTERN GAS MARKETING, INC.	08–07–95	G–S	10,000	N	F	05–01–95	10–31–95
ST95–3170	NORTHERN NATURAL GAS CO.	TECO GAS MARKETING, INC.	08–07–95	G–S	10,290	N	F	05–01–95	05–31–95
ST95–3171	NORTHERN NATURAL GAS CO.	CIBOLA CORP	08–07–95	G–S	10,040	N	F	05–02–95	05–31–95
ST95–3172	NORTHERN NATURAL GAS CO.	ASSOCIATED GAS SERVICES, INC.	08–07–95	G–S	4,900	N	F	05–09–95	05–31–95
ST95–3173	NORTHERN NATURAL GAS CO.	CIBOLA CORP	08–07–95	G–S	3,000	N	F	05–09–95	05–31–95
ST95–3174	LONE STAR PIPELINE CO.	EL PASO NATURAL GAS CO., ET AL.	08–07–95	C	10,000	N	I	06–24–95	INDEF.
ST95–3175	HUMBLE GAS PIPELINE CO.	EXXON CO. USA ...	08–07–95	C	6,000	N	I	12–01–94	INDEF.
ST95–3176	HUMBLE GAS PIPELINE CO.	NATURAL GAS PIPELINE CO. OF AMERICA.	08–07–95	C	5,000	N	I	11–01–94	INDEF.
ST95–3177	ANR PIPELINE CO .	TENNESSEE GAS PIPELINE CO.	08–07–95	G	675	N	F	11–01–93	02–22–97
ST95–3178	ANR PIPELINE CO .	AIG TRADING CO ..	08–07–95	G–S	N/A	Y	I	07–21–95	INDEF.
ST95–3179	ANR PIPELINE CO .	MICHIGAN CONSOLIDATED GAS CO.	08–07–95	B	N/A	N	I	07–22–95	INDEF.
ST95–3180	ANR PIPELINE CO .	WISCONSIN ELECTRIC POWER CO.	08–07–95	G–S	N/A	N	I	07–12–95	INDEF.
ST95–3181	ANR PIPELINE CO .	KIMBALL TRIP ENERGY CO.	08–07–95	G–S	N/A	N	I	07–13–95	INDEF.
ST95–3182	ANR PIPELINE CO .	TENNESSEE GAS PIPELINE CO.	08–07–95	G	11,250	N	F	11–01–93	02–20–95
ST95–3183	ANR PIPELINE CO .	TENNESSEE GAS PIPELINE CO.	08–07–95	G	15,000	N	F	11–01–93	09–26–95
ST95–3184	ANR PIPELINE CO .	TENNESSEE GAS PIPELINE CO.	08–07–95	G	2,025	N	F	11–01–93	08–27–95
ST95–3185	ANR PIPELINE CO .	TENNESSEE GAS PIPELINE CO.	08–07–95	G	1,800	N	F	11–01–93	09–26–95
ST95–3186	COLORADO INTERSTATE GAS CO.	WYOMING GAS CO	08–07–95	B	1,300	N	F	08–01–95	07–31–96
ST95–3187	NORTHERN NATURAL GAS CO.	TECO GAS MARKETING CO.	08–08–95	G–S	20,000	N	F	07–01–95	07–31–95
ST95–3188	NORTHERN NATURAL GAS CO.	TWISTER TRANSMISSION CO.	08–08–95	G–S	20,000	N	F	06–03–95	06–30–95
ST95–3189	NORTHERN NATURAL GAS CO.	AURORA NATURAL GAS CO.	08–08–95	G–S	6,520	N	F	05–26–95	05–31–95
ST95–3190	NORTHERN NATURAL GAS CO.	CIBOLA CORP	08–08–95	G–S	5,000	N	F	07–01–95	09–30–95
ST95–3191	NORTHERN NATURAL GAS CO.	INTERENERGY RESOURCES CORP.	08–08–95	G–S	5,000	N	F	06–01–95	06–30–95
ST95–3192	NORTHERN NATURAL GAS CO.	TECO GAS MARKETING CO.	08–08–95	G–S	8,000	N	F	06–01–95	06–30–95
ST95–3193	NORTHERN NATURAL GAS CO.	NGC TRANSPORTATION, INC.	08–08–95	G–S	10,000	N	F	06–09–95	09–30–95
ST95–3194	NORTHERN NATURAL GAS CO.	ENRON CAPITAL & TRADE RESOURCES.	08–08–95	G–S	25,000	N	F	06–01–95	09–30–95
ST95–3195	NORTHERN NATURAL GAS CO.	TECO GAS MARKETING CO.	08–08–95	G–S	10,204	N	F	06–01–95	06–30–95
ST95–3196	MISSISSIPPI RIVER TRANS. CORP.	INDUSTRIAL ENERGY APPLICATIONS, INC.	08–08–95	G–S	10,000	N	I	03–01–95	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–3197	TEXAS EASTERN TRANSMISSION CORP.	TEJAS GAS MARKETING CO.	08–09–95	G–S	22,500	N	I	07–11–95	INDEF.
ST95–3198	ALGONQUIN GAS TRANSMISSION CO.	BOSTON EDISON CO.	08–09–95	B	100	N	F	08–01–95	INDEF.
ST95–3199	NORTHERN NATURAL GAS CO.	CONTINENTAL NATURAL GAS, INC.	08–09–95	G–S	10,000	N	F	06–17–95	06–30–95
ST95–3200	NORTHERN NATURAL GAS CO.	NGC TRANSPORTATION, INC.	08–09–95	G–S	27,231	N	F	06–17–95	06–30–95
ST95–3201	NORTHERN NATURAL GAS CO.	TENASKA MARKETING VENTURES.	08–09–95	G–S	10,000	N	F	06–17–95	06–30–95
ST95–3202	NORTHERN NATURAL GAS CO.	NGC TRANSPORTATION, INC.	08–09–95	G–S	37,231	N	F	06–13–95	06–16–95
ST95–3203	NORTHERN NATURAL GAS CO.	U.S. GAS TRANSPORTATION.	08–09–95	G–S	5,157	N	F	06–15–95	09–16–95
ST95–3204	NORTHERN NATURAL GAS CO.	PREMIER GAS CO	08–09–95	G–S	8,500	N	F	06–07–95	06–30–95
ST95–3205	NORTHERN NATURAL GAS CO.	KOCH GAS SERVICES CO.	08–09–95	G–S	12,000	N	F	06–09–95	06–30–95
ST95–3206	NORTHERN NATURAL GAS CO.	TENASKA MARKETING VENTURES.	08–09–95	G–S	7,701	N	F	07–14–95	INDEF.
ST95–3207	NORTHERN NATURAL GAS CO.	LONE STAR GAS CO.	08–09–95	B	2,000	N	F	06–01–95	06–30–95
ST95–3208	NORTHERN NATURAL GAS CO.	WESTERN GAS RESOURCES, INC.	08–09–95	G–S	100,000	N	I	06–01–95	INDEF.
ST95–3209	CYPRESS GAS PIPELINE CO.	COLUMBIA GULF TRANS. CO., ET AL.	08–10–95	C	20,000	N	I	07–01–95	05–31–95
ST95–3210	TRANSOK, INC	MISSISSIPPI RIVER TR. CORP., ET AL.	08–10–95	C	15,000	N	I	08–04–95	INDEF.
ST95–3211	TRAILBLAZER PIPELINE CO.	NGC TRANSPORTATION, INC.	08–10–95	G–S	4,975	N	F	08–01–95	10–31–95
ST95–3212	NORAM GAS TRANSMISSION CO.	CONOCO, INC	08–10–95	G–S	15,000	N	F	08–01–95	07–31–96
ST95–3213	NORAM GAS TRANSMISSION CO.	NORAM ENERGY SERVICE, INC.	08–10–95	G–S	4,600	Y	F	08–01–95	08–31–95
ST95–3214	NORAM GAS TRANSMISSION CO.	TEXCO NATURAL GAS, INC.	08–10–95	G–S	1,500	N	F	08–01–95	08–31–95
ST95–3215	NORAM GAS TRANSMISSION CO.	VASTAR GAS MARKETING, INC.	08–10–95	G–S	15,000	N	F	08–01–95	04–30–95
ST95–3216	SEAGULL SHORELINE SYSTEM.	TEXAS EASTERN CORP.	08–11–95	C	2,000	N	I	07–13–95	INDEF.
ST95–3217	TRANSOK, INC	ANR PIPELINE CO. ET AL.	08–11–95	C	1,500	N	I	06–07–95	INDEF.
ST95–3218	KERN RIVER GAS TRANSMISSION CO.	SOUTHWEST GAS CORP.	08–11–95	B	25,000	N	F	07–21–95	07–31–95
ST95–3219	WILLISTON BASIN INTER. P/L CO.	TENASKA MARKETING VENTURES.	08–11–95	G–S	50,000	N	I	07–12–95	07–10–97
ST95–3220	TRAILBLAZER PIPELINE CO.	CONOCO, INC	08–11–95	G–S	9,434	N	F	08–01–95	11–30–96
ST95–3221	PANHANDLE EASTERN PIPE LINE CO.	COLORADO, INTERSTATE GAS CO.	08–14–95	G	50,000	N	F	07–01–95	12–31–96
ST95–3222	TRUNKLINE GAS CO.	UTILICORP UNITED, INC.	08–14–95	G–S	30,000	N	I	07–01–95	INDEF.
ST95–3223	TRUNKLINE GAS CO.	CROSSROADS PIPELINE CO.	08–14–95	G	30,000	N	I	08–02–95	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–3224	TEXAS GAS TRANSMISSION CORP.	EAGLE NATURAL GAS CO.	08–14–95	G–S	20,000	N	I	08–01–95	INDEF.
ST95–3225	TEXAS GAS TRANSMISSION CORP.	ENRON CAPITAL & TRADE RES. CORP.	08–14–95	G–S	30,000	N	I	08–02–95	INDEF.
ST95–3226	LOUISIANA INTRA-STATE GAS CO.	COLUMBIA GULF TRANS. CO., ET AL.	08–14–95	C	25,000	N	I	07–01–95	07–01–96
ST95–3227	LOUISIANA INTRA-STATE GAS CO.	COLUMBIA GULF TRANS. CO., ET AL.	08–14–95	C	25,000	N	I	05–01–95	05–01–96
ST95–3228	NATIONAL FUEL GAS SUPPLY CORP.	SENECA RESOURCES CORP.	08–15–95	G–S	5,000	N	I	08–01–95	08–01–00
ST95–3229	NATIONAL FUEL GAS SUPPLY CORP.	HOWARD ENERGY CO., INC.	08–15–95	G–S	50,000	N	I	08–01–95	08–01–15
ST95–3230	COLUMBIA GAS TRANSMISSION CORP.	PENN VIRGINIA OIL & GAS CORP.	08–15–95	G–S	5,476	N	F	08–01–95	11–30–95
ST95–3231	COLUMBIA GAS TRANSMISSION CORP.	ASHLAND EXPLORATION, INC.	08–15–95	G–S	7,878	N	F	08–01–95	INDEF.
ST95–3232	COLUMBIA GAS TRANSMISSION CORP.	HOWARD ENERGY CO., INC.	08–15–95	G–S	N/A	N	I	08–01–95	INDEF.
ST95–3233	COLUMBIA GAS TRANSMISSION CORP.	HOWARD ENERGY CO., INC.	08–15–95	G–S	75,000	N	I	08–01–95	INDEF.
ST95–3234	COLUMBIA GAS TRANSMISSION CORP.	EXPLORATION PARTNERS, INC.	08–15–95	G–S	4,000	N	I	08–01–95	INDEF.
ST95–3235	COLUMBIA GAS TRANSMISSION CORP.	ARCADIA ENERGY CORP.	08–15–95	G–S	N/A	N	I	08–01–95	INDEF.
ST95–3236	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA ENERGY MARKETING CORP.	08–15–95	G–S	4,000	A	I	08–01–95	INDEF.
ST95–3237	COLUMBIA GAS TRANSMISSION CORP.	CONAGRA ENERGY SERVICES CO.	08–15–95	G–S	N/A	N	I	08–01–95	INDEF.
ST95–3238	TRANS-CONTINENTAL GAS P/L CORP.	COSTILLA PETROLEUM CORP.	08–16–95	G–S	500	N	I	08–04–95	INDEF.
ST95–3239	TRANS-CONTINENTAL GAS P/L CORP.	J.P. OIL CO., INC ...	08–16–95	G–S	1,000	N	I	08–01–95	INDEF.
ST95–3240	KOCH GATEWAY PIPELINE CO.	SOUTHWESTERN ELECTRIC POWER CO.	08–16–95	G–S	N/A	N	I	07–19–95	INDEF.
ST95–3241	KOCH GATEWAY PIPELINE CO.	UNION PACIFIC RESOURCES CO.	08–16–95	G–S	N/A	N	I	07–19–95	06–01–05
ST95–3242	KOCH GATEWAY PIPELINE CO.	WASHINGTON PARISH-GAS UTIL. DIST 1.	08–16–95	B	25	N	F	08–02–95	11–01–95
ST95–3243	KENTUCKY WEST VIRGINIA GAS CO.	A & W PRODUCTION CO., INC.	08–16–95	G–S	1,000	N	I	07–01–95	INDEF.
ST95–3244	TENNESSEE GAS PIPELINE CO.	SPRAGUE ENERGY CORP.	08–16–95	G–S	30,000	N	I	08–02–95	INDEF.
ST95–3245	TENNESSEE GAS PIPELINE CO.	COLUMBIA ENERGY SERVICES.	08–16–95	G–S	4	N	F	08–01–95	INDEF.
ST95–3246	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	08–17–95	C	50,000	N	I	03–03–95	INDEF.
ST95–3247	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	08–17–95	C	50,000	N	I	11–13–94	INDEF.
ST95–3248	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	08–17–95	C	50,000	N	I	03–04–95	INDEF.
ST95–3249	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	08–17–95	C	50,000	N	I	01–04–95	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–3250	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	08–17–95	CC	50,000	N	I	01–01–95	INDEF.
ST95–3251	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	08–17–95	C	50,000	N	I	04–04–95	INDEF.
ST95–3252	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	08–17–95	C	50,000	N	I	04–10–95	INDEF.
ST95–3253	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	08–17–95	C	50,000	N	I	10–23–94	INDEF.
ST95–3254	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	08–17–95	C	50,000	N	I	01–28–95	INDEF.
ST95–3255	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	08–17–95	C	50,000	N	I	05–01–95	INDEF.
ST95–3256	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	08–17–95	C	50,000	N	I	10–01–94	INDEF.
ST95–3257	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	08–17–95	C	50,000	N	I	05–01–94	INDEF.
ST95–3258	WILLISTON BASIN INTER. P/L CO.	KN INTERSTATE GAS TRANSMISSION CO.	08–17–95	G–S	20,000	A	I	07–18–95	05–31–97
ST95–3259	WESTERN GAS RESOURCES STORAGE.	ENRON CAPITAL & TRADE RES. CORP.	08–17–95	C	100,000	N	I	02–22–95	INDEF.
ST95–3260	WESTERN GAS RESOURCES STORAGE.	MG NATURAL GAS CORP.	08–17–95	C	20,000	N	I	01–11–95	INDEF.
ST95–3261	WESTERN GAS RESOURCES STORAGE.	INVENTORY MANAG. & DISTRIB. CO.	08–17–95	C	50,000	N	I	10–03–94	INDEF.
ST95–3262	WESTERN GAS RESOURCES STORAGE.	TRANSCO GAS MARKETING CO.	08–17–95	C	20,000	N	I	09–21–94	INDEF.
ST95–3263	WESTERN GAS RESOURCES STORAGE.	AMOCO ENERGY TRADING CORP.	08–17–95	C	75,000	N	I	01–03–94	01–03–96
ST95–3264	WESTERN GAS RESOURCES STORAGE.	WESTERN GAS RESOURCES INC.	08–17–95	C	700,000	y	I	12–01–93	10–31–13
ST95–3265	TRAILBLAZER PIPELINE CO.	COASTAL GAS MARKETING CO.	08–18–95	G–S	2,830	N	F	08–01–95	08–31–95
ST95–3266	TENNESSEE GAS PIPELINE CO.	COMSTOCK OIL & GAS INC.	08–21–95	G–S	1	N	F	08–01–95	INDEF.
ST95–3267	GRANITE STATE GAS TRANSMISSION.	NORTHERN UTILITIES, INC.	08–21–95	B	2,700	N	I	04–01–95	03–31–96
ST95–3268	GRANITE STATE GAS TRANSMISSION.	NORTHERN UTILITIES, INC.	08–21–95	B	250	N	I	07–01–95	06–30–96
ST95–3269	WILLIAMS NATURAL GAS CO.	APACHE CORP	08–21–95	G–S	10,000	N	I	06–30–95	10–01–99
ST95–3270	NORTHERN NATURAL GAS CO.	GREAT PLAINS NATURAL GAS CO.	08–21–95	B/G–S	4,700	N	F	11–01–94	INDEF.
ST95–3271	NORTHERN NATURAL GAS CO.	MINNEGASCO, A DIV. OF NORMAN ENERGY.	08–21–95	B/G–S	392,289	N	F	07–01–94	INDEF.
ST95–3272	NORTHERN NATURAL GAS CO.	ENRON CAPITAL & TRADE RESOURCES.	08–21–95	G–S	25,000	Y	F	06–01–95	09–30–95
ST95–3273	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA ENERGY SERVICES CORP.	08–22–95	G–S	N/A	Y	I	08–09–95	03–31–96
ST95–3274	COLUMBIA GAS TRANSMISSION CORP.	WICKFORD ENERGY MARKETING, L.C.	08–22–95	G–S	N/A	N	I	07–01–95	INDEF.
ST95–3275	WILLIAMS NATURAL GAS CO.	MISSOURI GAS ENERGY CO.	08–22–95	B	200,000	N	I	07–31–95	05–01–99
ST95–3276	CNG TRANSMISSION CORP.	COLUMBIA GAS OF OHIO.	08–22–95	G–S	675	N	F	08–01–95	03–31–99
ST95–3277	CNG TRANSMISSION CORP.	WILLIAMETTE INDUSTRIES, INC.	08–22–95	G–S	5,800	M	F	08–01–95	03–31–95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–3278	CNG TRANSMISSION CORP.	HANLEY & BIRD	08–22–95	G–S	10,000	N	F	07–01–95	03–31–01
ST95–3279	CNG TRANSMISSION CORP.	COLUMBIA GAS OF PENNSYLVANIA.	08–22–95	G–S	8,320	N	F	08–01–95	03–31–96
ST95–3280	TEXAS EASTERN TRANSMISSION CORP.	ENRON GAS MARKETING, INC.	08–23–95	G–S	391,000	N	I	08–12–95	INDEF.
ST95–3281	TEXAS EASTERN TRANSMISSION CORP.	TRANSPORT GAS CORP.	08–23–95	G–S	10,000	N	I	08–04–95	INDEF.
ST95–3282	COLUMBIA GAS TRANSMISSION CORP.	INTERSTATE NATURAL GAS CO.	08–23–95	G–S	10,000	N	I	08–16–95	INDEF.
ST95–3283	FLORIDA GAS TRANSMISSION CO.	MOBIL GAS SERVICE CORP.	08–23–95	G–S	25,000	N	I	07–24–95	INDEF.
ST95–3284	EL PASO NATURAL GAS CO.	COASTAL GAS MARKETING CO.	08–23–95	G–S	100,000	N	I	07–28–95	INDEF.
ST95–3285	TENNESSEE GAS PIPELINE CO.	EASTERN ENERGY MARKETING, INC.	08–23–95	G–S	4	N	F	08–18–95	INDEF.
ST95–3286	TEXAS GAS TRANSMISSION CORP..	CITIZENS ENERGY SERVICES CORP..	08–24–95	G–S	200,000	N	I	08–15–95	INDEF.
ST95–3287	TRAILBLAZER PIPELINE CO.	INTERENERGY GAS SERVICES CORP.	08–24–95	G–S	14,150	N	F	08–01–95	08–31–95
ST95–3288	TRAILBLAZER PIPELINE CO.	INTERENERGY GAS SERVICES CORP.	08–24–95	G–S	2,360	N	F	08–01–95	10–31–95
ST95–3289	EL PASO NATURAL GAS CO.	ORYX GAS MARKETING LIMITED PART.	08–24–95	G–S	30,900	N	I	08–01–95	INDEF.
ST95–3290	EL PASO NATURAL GAS CO.	MOBIL NATURAL GAS INC.	08–24–95	G–S	50,000	N	I	07–29–95	INDEF.
ST95–3291	TEJAS GAS PIPELINE CO.	NORTHERN NATURAL GAS CO.	08–24–95	C	500,000	A	I	09–01–93	INDEF.
ST95–3292	TEJAS GAS PIPELINE CO.	MOSS BLUFF STORAGE FACILITY CO.	08–24–95	C	500,000	A	I	09–01–93	INDEF.
ST95–3293	TEJAS GAS PIPELINE CO.	TEJAS POWER TOMCAT PIPELINE CO.	08–24–95	C	500,000	A	I	09–01–93	INDEF.
ST95–3294	TEJAS GAS PIPELINE CO.	TENNESSEE GAS PIPELINE CO.	08–24–95	C	500,000	A	I	09–01–93	INDEF.
ST95–3295	TEJAS GAS PIPELINE CO.	TEXAS EASTERN TRANSMISSION CO.	08–24–95	C	500,000	A	I	09–01–93	INDEF.
ST95–3296	TEJAS GAS PIPELINE CO.	TRANCO PIPELINE CO.	08–24–95	C	500,000	A	I	09–01–93	INDEF.
ST95–3297	TEJAS GAS PIPELINE CO.	TRUNKLINE PIPELINE CO.	08–24–95	C	500,000	N	I	09–01–93	INDEF.
ST95–3298	TENNESSEE GAS PIPELINE CO.	GULFLAND RESOURCES, INC.	08–25–95	G–S	46	N	I	08–01–95	INDEF.
ST95–3299	TRANSWESTERN PIPELINE CO.	OASIS PIPELINE CO.	08–25–95	B	14,803	N	F	07–01–95	07–31–95
ST95–3300	TRANSWESTERN PIPELINE CO.	OASIS PIPELINE CO.	08–25–95	B	10,310	N	F	07–01–95	07–31–95
ST95–3301	TRANSWESTERN PIPELINE CO.	OASIS PIPELINE CO.	08–25–95	B	25,000	N	F	07–01–95	07–31–95
ST95–3302	TRANSWESTERN PIPELINE CO.	LONE STAR GAS CO.	08–25–95	B	100,000	N	I	07–20–95	07–20–95
ST95–3303	TRANSWESTERN PIPELINE CO.	COASTAL GAS MARKETING CO.	08–25–95	G–S	10,000	N	F	07–01–95	07–31–95
ST95–3304	TRANSWESTERN PIPELINE CO.	TRISTAR GAS MARKETING CO.	08–25–95	G–S	10,000	N	F	08–01–95	08–31–95
ST95–3305	TRANSWESTERN PIPELINE CO.	SAN DIEGO GAS & ELECTRIC CO.	08–25–95	G–S	2,400	N	F	07–01–95	09–30–95
ST95–3306	TRANSWESTERN PIPELINE CO.	TRISTAR GAS CO .	08–25–95	B	20,000	N	I	07–18–95	03–01–95
ST95–3307	TRANSWESTERN PIPELINE CO.	LONE STAR GAS CO.	08–25–95	B	50,000	N	I	08–01–95	07–31–95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–3308	TRANSWESTERN PIPELINE CO.	AMOCO ENERGY TRADING CORP.	08–25–95	G–S	29,998	N	I	07–01–95	07–31–95
ST95–3309	TRANSWESTERN PIPELINE CO.	MOBIL NATURAL GAS INC.	08–25–95	G–S	4,250	N	F	08–01–95	08–31–95
ST95–3310	TRANSWESTERN PIPELINE CO.	ENRON CAPITAL & TRADING RES. CORP.	08–25–95	G–S	30,000	N	F	07–01–95	07–31–95
ST95–3311	TRANSWESTERN PIPELINE CO.	AMOCO ENERGY TRADING CORP.	08–25–95	G–S	35,000	N	F	08–01–95	08–31–95
ST95–3312	TRANSWESTERN PIPELINE CO.	DELHI GAS MARKETING CORP.	08–25–95	G–S	5,000	N	F	07–01–95	08–31–95
ST95–3313	TRANSWESTERN PIPELINE CO.	OASIS PIPELINE CO.	08–25–95	G–S	10,000	N	F	08–01–95	08–31–95
ST95–3314	TRANSWESTERN PIPELINE CO.	AQUILA ENERGY MARKETING CORP.	08–25–95	G–S	9,500	N	F	08–01–95	08–31–95
ST95–3315	TRANSWESTERN PIPELINE CO.	AMOCO ENERGY TRADING CORP.	08–25–95	G–S	2,300	N	F	07–01–95	07–31–95
ST95–3316	TRANSWESTERN PIPELINE CO.	AMOCO ENERGY TRADING CORP.	08–25–95	G–S	11,564	N	F	08–01–95	08–31–95
ST95–3317	TRANSWESTERN PIPELINE CO.	NATIONAL GAS & ELECTRIC L.P..	08–25–95	G–S	9,550	N	F	08–01–95	08–31–95
ST95–3318	TRANSWESTERN PIPELINE CO.	COASTAL GAS MARKETING CO.	08–25–95	G–S	10,000	N	F	07–01–95	10–31–95
ST95–3319	TRANSWESTERN PIPELINE CO.	TRISTAR GAS MARKETING CO.	08–25–95	B	6,900	N	F	07–01–95	07–31–95
ST95–3320	TRANSWESTERN PIPELINE CO.	OASIS PIPELINE CO.	08–25–95	B	14,804	N	F	08–01–95	08–31–95
ST95–3321	TRANSWESTERN PIPELINE CO.	WESTAR TRANSMISSION CO.	08–25–95	B	199	N	F	08–01–95	08–31–95
ST95–3322	TRANSWESTERN PIPELINE CO.	LONE STAR GAS CO.	08–25–95	B	100,000	N	I	08–17–95	12–16–00
ST95–3325	TRANSWESTERN PIPELINE CO.	LONE STAR GAS CO.	08–25–95	B	20,000	N	I	07–20–95	08–05–95
ST95–3325	TRANSWESTERN PIPELINE CO.	KN MARKETING CO.	08–25–95	G–S	20,000	N	F	07–21–95	07–19–95
ST95–3325	TRANSWESTERN PIPELINE CO.	CONAGRA ENERGY SERVICES CO.	08–25–95	G–S	100,000	N	I	08–05–95	08–05–95
ST95–3326	PANHANDLE EASTERN PIPE LINE CO.	ANADARKO TRADING CO.	08–25–95	G–S	212,400	N	F	08–01–95	11–30–95
ST95–3327	PANHANDLE EASTERN PIPE LINE CO.	LEE 8 STORAGE PARTNERSHIP.	08–25–95	B	50,000	Y	I	08–10–95	07–31–97
ST95–3328	PANHANDLE EASTERN PIPELINE CO.	ANDARKO PETROLEUM CORP.	08–25–95	G–S	30,000	N	F	08–01–95	08–31–95
ST95–3329	ANR PIPELINE CO .	H & N GAS LTD	08–25–95	G–S	10,000	N	F	08–01–95	07–31–96
ST95–3330	ANR PIPELINE CO .	AIG TRADING CORP.	08–25–95	G–S	N/A	Y	I	07–20–95	08–08–95
ST95–3331	WILLISTON BASIN INTER. P/L CO.	WESTERN SUGAR CO.	08–25–95	G–S	10,000	A	I	07–26–95	05–12–97
ST95–3332	TENNESSEE GAS PIPELINE CO.	SPRAGUE ENERGY CORP.	08–28–95	G–S	1	N	F	08–01–95	08–03–95
ST95–3333	TENNESSEE GAS PIPELINE CO.	MG PERRY GAS COMPANIES, INC.	08–28–95	G–S	4	N	F	08–11–95	INDEF.
ST95–3334	CHANNEL INDUSTRIES GAS CO.	EL PASO NATURAL GAS CO., ET AL.	08–28–95	C	50,000	N	I	08–16–95	INDEF.
ST95–3335	NORAM GAS TRANSMISSION CO.	VASTAR GAS MARKETING, INC.	08–28–95	G–S	15,000	N	F	08–01–95	03–31–96
ST95–3336	COLUMBIA GAS TRANSMISSION CORP.	TRISTAR VENTURES CORP.	08–28–95	G–S	100,000	Y	I	08–01–95	INDEF.
ST95–3337	COLUMBIA GAS TRANSMISSION CORP.	NORSTAR ENERGY LIMITED PARTNERSHIP.	08–28–95	G–S	800,000	N	I	08–01–95	INDEF.
ST95–3338	COLUMBIA GAS TRANSMISSION CORP.	MERIDIAN MARKETING CORP.	08–28–95	G–S	35,000	N	I	08–01–95	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–3339	COLUMBIA GAS TRANSMISSION CORP.	HOWARD ENERGY CO., INC.	08–28–95	G–S	100,000	N	I	08–01–95	INDEF.
ST95–3340	COLUMBIA GAS TRANSMISSION CORP.	GELBER GROUP, INC.	08–28–95	G–S	20,000	N	I	08–01–95	INDEF.
ST95–3341	COLUMBIA GAS TRANSMISSION CORP.	COSTILLA PETROLEUM CORP.	08–28–95	G–S	500	N	I	08–01–95	INDEF.
ST95–3342	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA ENERGY MARKETING CORP.	08–28–95	G–S	100,000	A	I	08–01–95	INDEF.
ST95–3343	VALERO TRANSMISSION, L.P.	EL PASO NATURAL GAS CO., ET AL.	08–29–95	C	30,000	N	I	08–16–95	INDEF.
ST95–3344	K N INTERSTATE GAS TRANS. CO.	UTILICORP UNITED, INC.	08–28–95	G–S	5,000	N	F	08–04–95	10–31–95
ST95–3345	PANHANDLE EASTERN PIPE LINE CO.	SCHULLER INTERNATIONAL, INC.	08–29–95	G–S	9,800	N	F	08–01–95	10–31–98
ST95–3346	SOUTHERN NATURAL GAS CO.	CITY OF BLAKELY .	08–29–95	G–S	254	N	F	08–01–95	10–31–95
ST95–3347	SOUTHERN NATURAL GAS CO.	CITY OF CAMILLA .	08–29–95	G–S	446	N	F	08–07–95	10–31–95
ST95–3348	EL PASO NATURAL GAS CO.	PREMIER GAS CO	08–29–95	G–S	5,150	N	I	08–02–95	INDEF.
ST95–3349	TRANSOK, INC	ANR PIPELINE CO., ET AL.	08–30–95	C	20,000	N	I	08–01–95	08–31–95
ST95–3350	TRANSOK, INC	ANR PIPELINE CO., ET AL.	08–30–95	C	50,000	N	I	08–01–95	07–31–00
ST95–3351	TRANSOK, INC	ANR PIPELINE CO., ET AL.	08–30–95	C	20,000	N	I	08–01–95	08–31–95
ST95–3352	TENNESSEE GAS PIPELINE CO.	JUNE ENERGY, INC.	08–30–95	G–S	100	N	I	08–16–95	INDEF.
ST95–3353	GREAT LAKES GAS TRANS., L.P.	UNION GAS LTD	08–30–95	G–S	1,515	N	F	08–01–95	11–30–99
ST95–3354	NATURAL GAS P/L CO. OF AMERICA.	MOBIL NATURAL GAS INC.	08–30–95	G–S	20,000	N	F	08–02–95	08–08–95
ST95–3355	NATURAL GAS P/L CO. OF AMERICA.	TORCH GAS, L.C ...	08–30–95	G–S	5,000	N	F	08–01–95	08–31–95
ST95–3356	NATURAL GAS P/L CO. OF AMERICA.	OLYMPIC FUELS CO.	08–30–95	G–S	7,500	N	F	08–02–95	07–31–96
ST95–3357	NATURAL GAS P/L CO. OF AMERICA.	MOCK RESOURCES, INC.	08–30–95	G–S	50,000	N	I	08–01–95	INDEF.
ST95–3358	PACIFIC GAS TRANSMISSION CO.	SACRAMENTO MUNICIPAL UTILITY DIST.	08–30–95	G–S	100,000	N	I	08–03–95	INDEF.
ST95–3359	PACIFIC GAS TRANSMISSION CO.	POCO PETROLEUMS LTD.	08–30–95	G–S	3,750	N	F	08–01–95	10–31–05
ST95–3360	PACIFIC GAS TRANSMISSION CO.	PARAMOUNT RESOURCES U.S. INC.	08–30–95	G–S	19,592	N	F	08–01–95	10–31–05
ST95–3361	PACIFIC GAS TRANSMISSION CO.	NUMAC ENERGY (U.S.) INC.	08–30–95	G–S	10,000	N	F	08–01–95	10–31–05
ST95–3362	PACIFIC GAS TRANSMISSION CO.	ALENCO GAS SERVICES INC.	08–30–95	G–S	16,053	N	F	08–01–95	10–31–05
ST95–3363	PACIFIC GAS TRANSMISSION CO.	PANCANADIAN PETROLEUM CO.	08–30–95	G–S	40,000	N	F	08–01–95	10–31–05
ST95–3364	PACIFIC GAS TRANSMISSION CO.	WASHINGTON WATER POWER CO.	08–30–95	G–S	25,000	N	F	08–01–95	10–31–05
ST95–3365	IROQUOIS GAS TRANSMISSION SYSTEM.	WICKFORD ENERGY MARKETING.	08–30–95	G–S	30,000	N	I	08–04–95	INDEF.
ST95–3366	IROQUOIS GAS TRANSMISSION SYSTEM.	EASTERN ENERGY MARKETING, INC.	08–30–95	G–S	20,000	N	F	08–01–95	09–01–95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–3367	COLORADO INTERSTATE GAS CO.	BARRETT RESOURCES CORP.	08–30–95	G–S	7,159	N	F	08–01–95	08–31–95
ST95–3368	FLORIDA GAS TRANSMISSION CO.	GULFSIDE INDUSTRIES, LTD.	08–31–95	G–S	300	N	F	08–01–95	INDEF.
ST95–3369	NORTHERN NATURAL GAS CO.	OXY USA, INC	08–31–95	G–S	19,000	N	F	07–01–95	08–31–95
ST95–3370	NORTHERN NATURAL GAS CO.	TARTAN ENERGY RESOURCES, L.C.	08–31–95	G–S	150,000	N	I	08–01–95	07–31–96
ST95–3371	NORTHERN NATURAL GAS CO.	AURORA NATURAL GAS CO.	08–31–95	G–S	6,325	N	F	08–01–95	07–29–96
ST95–3372	NORTHERN NATURAL GAS CO.	NGC TRANSPORTATION INC.	08–31–95	G–S	60,000	N	F	08–01–95	08–31–95
ST95–3373	NORTHERN NATURAL GAS CO.	NGC TRANSPORTATION INC.	08–31–95	G–S	26,000	N	F	08–01–95	08–31–95
ST95–3374	NORTHERN NATURAL GAS CO.	GPM GAS CORP	08–31–95	G–S	12,000	N	F	08–01–95	12–31–95
ST95–3375	NORTHERN NATURAL GAS CO.	CIBOLA CORP	08–31–95	G–S	20,000	N	F	08–01–95	08–31–95
ST95–3376	NORTHERN NATURAL GAS CO.	ASSOCIATED GAS SERVICES, INC.	08–31–95	G–S	20,000	N	F	08–01–95	08–31–95
ST95–3377	NORTHERN NATURAL GAS CO.	LIVELY EXPLORATION CO.	08–31–95	G–S	10,000	N	I	08–01–95	08–31–95
ST95–3378	NORTHERN NATURAL GAS CO.	TRISTAR GAS MARKETING CO.	08–31–95	G–S	10,000	N	F	08–01–95	08–31–95
ST95–3379	NORTHERN NATURAL GAS CO.	NATIONAL GAS & ELECTRIC L.P.	08–31–95	G–S	15,000	N	F	08–01–95	08–31–95
ST95–3380	WILLISTON BASIN INTER. P/L CO.	RAINBOW GSS CO	08–31–95	G–S	86	A	F	08–01–95	07–31–98
ST95–3381	TRUNKLINE GAS CO.	NI–TEX, INC	08–31–95	G–S	1,000	N	I	08–22–95	11–22–95
ST95–3382	MOJAVE PIPELINE CO.	NATIONAL GAS & ELECTRIC L.P.	08–31–95	G–S	20,000	N	I	08–27–95	07–25–96

[1] NOTICE OF TRANSACTIONS DOES NOT CONSTITUTE A DETERMINATION THAT FILINGS COMPLY WTH COMMISSION REGULATIONS IN ACCORDANCE WITH ORDER NO. 436 (FINAL RULE AND NOTICE REQUESTING SUPPLEMENTAL COMMENTS, 50 FR 42,372, 10/10/85).

[2] ESTIMATED MAXIMUM DAILY VOLUMES INCLUDES VOLUMES REPORTED BY THE FILING COMPANY IN MMBTU, MCF AND DT.

[3] AFFILIATION OF REPORTING COMPANY TO ENTITIES INVOLVED IN THE TRANSACTION. A ''Y'' INDICATES AFFILIATION, AN ''A'' INDICATES MARKETING AFFILIATION, AND A ''N'' INDICATES NO AFFILIATION.

[FR Doc. 95–23767 Filed 9–25–95; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. CP95–758–000]

CNG Transmission Corporation; Notice of Application for Abandonment

September 20, 1995.

Take notice that on September 15, 1995, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301 filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations requesting permission and approval to abandon 42,286 feet of 8'' pipeline, known as H–21005, located in Barbour County, West Virginia, by sale to Fuel Resources, Inc. for use as a non-jurisdictional gathering line, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 11, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken out but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23766 Filed 9–25–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP95–759–000]

East Texas Gas System; Notice of Petition for Declaratory Order

September 20, 1995.

Take notice that on September 15, 1995, East Texas Gas Systems (ETGS), 801 Cherry Street, Fort Worth, Texas 76102, filed a petition for a declaratory order in Docket No. CP95–759–000, requesting that the Commission declare that the facilities to be acquired from Texas Gas Transmission Corporation (Texas Gas) can be utilized to provide open access transportation pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) and that the facilities and the services to be rendered through them will not be subject to the Commission's Natural Gas Act (NGA) jurisdiction, all as more fully set forth in the petition on file with the Commission and open to public inspection.

ETGS, a Texas general partnership operated by Union Pacific Intrastate Pipeline Company, a wholly owned subsidiary of Union Pacific Fuels, Inc. (U.P. Fuels), states that upon the Commission's approval of Texas Gas' application to abandon facilities by transfer on file with the Commission in Docket No. CP95–275–000, and upon the issuance of a declaratory order pursuant to this Petition, Texas Gas will convey to ETGS approximately 45,361 feet of pipeline and associated appurtenances (Facilities) located in Panola County, Texas.[1]

ETGS states that the Facilities consist of approximately 144 feet of 8⅝–inch pipeline and approximately 45,217 feet of 20–inch pipeline, along with associated appurtenances, originating at the UPRC operated Carthage Compressor Station and extending to the UPRC operated East Texas Plant, located in Panola County, Texas.

ETGS states that the Facilities were originally placed into service by Texas Gas in 1949 and were authorized as part of Texas Gas' Sharon-Carthage system. ETGS states that the Facilities were eventually leased to Champlain Petroleum Company, UPRC's predecessor in interest, who used them to move gas from various producers between the East Texas Plant and the Carthage Compressor Station for redelivery to various purchasers.

ETGS states that the Facilities are currently part of the Carthage Hub market center and are used to provide fuel to the Carthage Compressor Station and, pursuant to NGPA Section 311, to ship gas from the multiple interconnect points on the Carthage Hub to points of interconnect with Texas Eastern Transmission Corporation and Koch Gateway Pipeline. ETGS states that, upon acquisition of the Facilities, ETGS will continue to use them in this same manner.

ETGS requests that the Commission permit the proposed abandonment by Texas Gas and allow the transfer of the Facilities to ETGS. Further, ETGS requests that the Commission declare that ETGS may continue to provide NGPA Section 311(a)(2) transportation service through the Facilities and that the Facilities and services rendered through them, upon abandonment and transfer to ETGS, will not be subject to the Commission's NGA jurisdiction.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 11, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23765 Filed 9–25–95; 8:45 am]

BILLING CODE 6717–01–M

[1] U.P. Fuels is a wholly owned subsidiary of Union Pacific Resources Company (UPRC).

[Docket No. RP95–105–002]

Florida Gas Transmission Company; Notice of Refund Report

September 20, 1995.

Take notice that on August 31, 1995, Florida Gas Transmission Company (FGT) tendered for filing a refund report reflecting cash-out revenues in excess of costs which FGT refunded to its shippers on August 17, 1995, in compliance with Section 14.B.8 of the General Terms and Conditions of FGT's FERC Gas Tariff, Third Revised Volume No. 1 and the Commission Order issued June 20, 1995.

FGT states that it refunded to its shippers $534,994 comprised of $517,719 of principal and $17,225 of interest. In compliance with the Commission order, FGT states that it calculated interest from December 30, 1994, the day FGT would have made refunds pursuant to its tariff, through August 17, 1995, the date the refunds were distributed. Also, as required by the Order, FGT states that it allocated the refunds to its shippers on a pro rata basis based on volumes transported during the period from November, 1993 through June, 1994.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 27, 1995. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspections.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23764 Filed 9–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–438–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 20, 1995.

Take notice that on September 15, 1995, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

First Revised First Revised Sheet No. 125A
First Revised Original Sheet No. 125B

FGT states that in the instant filing, FGT is proposing minor clarifications to its tariff provisions for the disposition of Unauthorized Gas delivered to FGT's system. FGT's currently effective tariff provisions provide that claimants have thirty (30) days to schedule Unauthorized Gas volumes which are claimed either during: (1) The first twenty-four (24) hours of the Notice period for unauthorized volumes received after the effectiveness of the tariff provisions; or (2) the sixty (60) day period which was provided parties to claim unauthorized volumes which were delivered to FGT's system prior to March 15, 1995.[1] FGT's tariff does not expressly state how such volumes shall be treated if a claimant does not schedule the volumes within the required thirty (30) day deadline. FGT is

[1] *See* First Revised Sheet No. 125A.

proposing herein to clarify that such volumes will be purchased by FGT at a price of eighty (80) percent of the Tivoli Index. This will provide such claimants treatment similar to Unauthorized Gas volumes for which a valid claim is submitted after the first twenty-four (24) hours of the Notice period and for which claimants are not entitled to schedule such volumes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23763 Filed 9–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–439–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 20, 1995.

Take notice that on September 15, 1995, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective October 1, 1995, the following tariff sheet:

First Revised Original Sheet No. 117A

FGT states that by orders issued January 15, 1993, April 21, 1993, September 15, 1993 and February 2, 1994, the Federal Energy Regulatory Commission approved the Stipulation and Agreement filed August 25, 1992 in Docket Nos. CP92–182, et al. and authorized FGT to construct and operate a major expansion of its system (''Phase III Expansion''). These orders also authorized FGT to provide firm transportation service through the expanded capacity pursuant to a new firm transportation rate schedule, FTS–2. Construction was completed and service under FTS–2 began March 1, 1995.

As part of the Phase III Expansion, FGT entered into a firm transportation agreement with Southern Natural Gas company (''Southern'') for 100,000 MMBtu per day. This agreement became effective with the commencement of service under Rate Schedule FTS–2 on March 1, 1995. The capacity under this arrangement is treated as an extension of FTG's system providing FGT's shippers with access to supplies attached to Southern's system. FGT administers the nominating, scheduling and billing of this capacity.

FGT states further that the current provisions of its Tariff establish a deadline of 10:00 a.m. Central Time by which shippers must provide written nominations to FGT. However, Southern's tariff also requires that FGT's nominations to Southern for FGT's shippers nominating receipt points on Southern's system be submitted by 10:00 a.m. Central Time. This does not allow sufficient time for FGT to process nominations on Southern receipt points, perform any necessary allocations of capacity on such points, and submit nominations on such points to Southern by Southern's same 10:00 a.m. nomination deadline.

FGT states that the instant filing proposes a tariff change to alleviate this situation by providing that FGT's shippers choosing to utilize receipt points on Southern's system shall submit such nominations to FGT by 9:00 a.m. Central Time.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Sections 385.211 and385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23762 Filed 9–25–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–5298–6]

Availability of Information Document on Aquatic Life Toxicity

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of an information document on aquatic life toxicity for Di-2-Ethylhexyl Phthalate (DEHP).

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of an information document on aquatic life toxicity for Di-2-Ethylhexyl Phthalate (DEHP). Ambient water quality criteria documents are developed pursuant to Section 304(a)(1) of the Clean Water Act. The current guidelines for ambient water quality criteria for the protection of aquatic life specify the data needed for development of a national criteria. Sufficient acute and chronic toxicity data for DEHP were not available to derive a national criteria. For this reason, EPA is announcing the availability of an information document which presents only lowest observed effect levels (LOEL's) for DEHP.

The group of chemicals commonly referred to as phthalates are esters of phthalic acid. Phthalates are used in the manufacture of plastics where they increase the flexibility, extensibility and workability of plastic. Di-2-Ethylhexyl Phthalate is the Phthalate compound that is produced in the largest volume.

ADDRESSES: A copy of the comments/responses and supporting documents (cited in the Reference section of this document) are available for review at EPA's Water Docket, 401 M Street, SW., Washington, DC 20460. For access to Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment.

Requests for copies of the supporting documents should be sent to: U.S. Environmental Protection Agency, National Center for Environmental Publications and Information, 11029 Kenwood Road, Cinncinati, OH 45242, (513) 489–8190, Internet address: Waterpubs@EPAmail.EPA.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Ogbebor, Health and Ecological Criteria Division (4304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–0658.

SUPPLEMENTARY INFORMATION:

Background

EPA publishes and periodically updates ambient water quality criteria pursuant to Section 304(a)(1) of the Clean Water Act, 33 U.S.C. 1314(a)(1). These criteria are intended to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life and recreation. Beginning in 1973, EPA has periodically issued ambient water quality criteria.

In July 1976, EPA published ''Quality Criteria for Water—1976'', which provided a freshwater aquatic life criteria for phthalate esters. A criterion value of 3 ug/L was established based on available acute and chronic data.

Four years later, EPA published a notice of availability of ''Ambient Water Quality Criteria for Phthalate Esters'' in the Federal Register, (45 FR 79318, November 28, 1980), (Ref. 2). This document established a Lowest Observed Effect Level (LOEL) of 3 ug/L for aquatic life, based on acute and chronic data. In addition this document greatly expanded the data base considered for this chemical.

A draft aquatic life criteria document for DEHP was made available for public comment on May 14, 1990, (55 FR 1986). This draft proposed establishing a chronic criteria of 360 ug/L and an acute criteria of 400 ug/L for both freshwater and saltwater. EPA is announcing the availability of an information document on aquatic life toxicity for Di-2-Ethylhexyl Phthalate for the protection of freshwater and saltwater aquatic organisms. This final document was derived after consideration of all comments received and following analysis of additional data received after the draft document was published in 1990.

Summary of Information Document on Aquatic Life Toxicity for Di-2-Ethylhexyl Phthalate

The procedures described in the ''Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses'', (hereafter referred to as the Guidelines) do not allow for the derivation of national criteria for Di-2-Ethylhexyl Phthalate (DEHP), based on the available test information.

Limited data indicate that acute toxicity occurs to freshwater aquatic life at a concentration as low as 2,000 ug/L, which is above the reported solubility limit for DEHP. Based on water solubility values which ranged from 270 ug/L to 400 ug/L, the mean concentration of 334 ug/L was calculated as the best estimate of water solubility for DEHP for this document. Chronic toxicity occurs to one freshwater species at a concentration as low as 160 ug/L, and would occur at lower concentrations among untested species that are more sensitive.

DEHP toxicity data for saltwater aquatic life is limited. However, if the chronic sensitivity of saltwater aquatic life to DEHP is similar to that of freshwater aquatic life, adverse effects on individual species might be expected at $\leq$ 160 ug/L.

Data on the acute toxicity of DEHP are available for fourteen species of freshwater animals and four saltwater organisms. In nearly all acute tests, the highest concentrations tested were not acutely toxic. Therefore, only ''greater-than'' the tested concentrations could be reported in this document. A final acute value for freshwater or saltwater organisms cannot be calculated because not enough definitive acute values exist to meet the minimum data base requirements according to the guidelines.

No final value, as defined in the Guidelines, can be calculated for either freshwater or saltwater plants. There is no Food & Drug Administration (FDA) action level or an available maximum dietary intake value derived from a chronic feeding study or a long-term field study with wildlife.

A final acute value cannot be calculated for DEHP, and only two acute-chronic ratios are available as greater-than values; therefore, no final chronic value for DEHP can be calculated using the final acute-chronic ratio procedure according to the Guidelines.

Response to Public Comments on the Information Document on Aquatic Life Toxicity for Di-2-Ethylhexyl Phthalate

Comments to the draft criteria document were made by the following: Chemical Manufacturers Association (CMA), American Water Works Association (AWWA), Monsanto Company, State of Ohio Environmental Protection Agency, Dow Chemical USA, Detroit Water and Sewerage Department, State of Maryland Department of the Environment, Utility Act Group.

The following are responses to comments by several organizations on the draft document for Di-2-Ethylhexyl Phthalate (DEHP), which was published in the Federal Register on May 14, 1990, (55 FR 11986, Docket No. OW–FRL–3762–9). The draft, dated 9/24/87, was revised by ERL-Duluth and ERL-Narragansett, based on these comments and additional literature information. EPA has chosen not to issue numerical national criteria for DEHP instead of the criteria initially proposed in the Federal Register draft, most of the comments are no longer issued. However, EPA has responded to each comment for the record.

The following comments represent a summary of the most important comments received. The complete response to public comment document can be obtained by contacting the Office of Water Resource Center at the previously noted address.

Commentor—EPA should withdraw the numerical Criteria Maximum Concentration (CMC) for DEHP and replace it with a narrative criterion of ''free from floating material''. The EPA should not publish the final aquatic life criteria values that are strictly based on solubility for DEHP. EPA should not use the solubility limit as a surrogate for a CMC. The approach of using solubility results is unnecessarily stringent criteria. The EPA should not set water quality criteria in situations where no toxicity has been observed. CMA recommends that EPA formally withdraw the 1980 phthalate esters criteria document with notice in the Federal Register to avoid confusion and misunderstanding that result from continued use of this document.

Response—EPA agrees that the CMC for DEHP, as stated in the 9/24/87 draft document, should not be used. EPA acknowledges the fact that a numerical CMC cannot be calculated for Di-2-Ethylhexyl Phthalate because not enough of the available acute toxicity test information provides definitive toxicity endpoints (i.e., LC50s) for calculating a Final Acute Value for either freshwater or saltwater organisms, according to the ''Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses'', hereafter referred to as the Guidelines. Several studies shows that DEHP is not toxic at the tested concentrations. This results in ''greater than'' LC50's for most tests with freshwater organisms and for all tests with saltwater organisms. Most often, concentrations greatly exceed the water solubility limit of 334 ug/L; EPA's best estimate based on the current literature. Therefore, EPA will not issue a freshwater or saltwater CMC for DEHP based on the available acute test information. The information presented in this document will supersede previous national aquatic life water quality criteria for DEHP (U.S. EPA, 1976 1980 (Ref. I and 3 respectively).

Commentor—The Criteria Continuous Concentration (CCC) for DEHP should be recalculated using data previously

submitted to EPA by the CMA Phthalate Esters Panel as part of a voluntary testing program under Section 4 of TSCA. The CCC for DEHP should be established at 200 ug/L based on available chronic toxicity data although it is less rigorous than the EPA Guidelines approach. The current chronic guidance value for all phthalate esters should be publicly withdrawn immediately. EPA should calculate separate CMC's and CCC's for freshwater and saltwater organisms.

Response—EPA acknowledges that not enough chronic toxicity tests are available to provide definitive endpoints for calculating the chronic values for DEHP. This lack of information combined with the lack of definitive acute information also does not allow for calculation of a Final Chronic Value, according to the Guidelines. Therefore, EPA will not issue a freshwater or saltwater CCC for DEHP based on the available chronic test information. However, one chronic toxicity test indicates that DEHP is toxic to *Daphnia magna* (a freshwater cladoceran) at concentrations below DEHP's water solubility limit of 334 ug/L. Data provided by CMA show that DEHP concentrations as low as 160 and 290 ug/L are chronically toxic to this species. These results conflict with those from other studies which indicate that DEHP is only toxic to this same species at concentrations above solubility (358 to 5,394 ug/L). Because of the large uncertainty associated with this range of results combined with limited definitive chronic data for DEHP, there is concern that this group of aquatic species could be affected unacceptably if populations are exposed for long periods of time to DEHP at concentrations ≥160 ug/L.

EPA is not recommending any CCC for DEHP, CMA's recommendation of using 200 ug/L as the CCC for this chemical is no longer an issue. However, this value cannot be recommended as a ''level of concern'' because CMA's own data show that concentrations ≥160 ug/L are chronically toxic. In addition, it is possible that untested concentrations that are lower than 160 ug/L could be toxic to cladocerans since the chronic value calculated from CMA's study is 110 ug/L, and effect concentrations could occur at still lower concentrations among untested freshwater species that are more sensitive than cladocerans.

Toxicity data for DEHP and saltwater aquatic life is very limited. However, if their chronic sensitivity to DEHP is similar to that of freshwater aquatic life, adverse effects on individual species might be expected at ≤160 ug/L. An ecosystem process, ammonia flux, has been shown to be reduced at 15.5 ug/L during summer months.

Commentor—Since human health and aquatic life criteria address different uses of a water body, EPA should view these criteria independently. Two separate criteria should be based on sound scientific studies which are available for public review and comment.

Response—Information for deriving water quality criteria for the protection of human health and aquatic life are gathered independently of each other and are currently used separately for preparing individual criteria documents for human health and aquatic life protection. The 1987 draft document only included information on DEHP and aquatic life. In addition, the 1985 Guidelines do not involve human health concerns except for FDA action levels for fish oil or the edible portion of fish or shellfish. DEHP does not have a FDA action level at this time; therefore, aquatic life criteria cannot be influenced by residue that are used in connection with the protection of human health.

Commentor—The draft document assumes that DEHP is equal in toxicity to freshwater and saltwater organisms. A minimum data set for saltwater species should be derived with which to calculate saltwater criteria. Water quality factors such as pH, hardness, alkalinity and temperature can play a major role in the toxicity of a constituent. Ideally, the water quality factors likely to impact the toxicity of a constituent should be determined and factored into the development of the Criteria Continuous Concentration (CCC) and the Criteria Maximum Concentration (CMC) numbers. If this is not performed, the states should be allowed flexibility to set water quality criteria based on both positive and negative influence from other water quality factors.

Response—EPA agrees that there is not enough data to meet the minimum data base for deriving criteria for saltwater organisms and will not issue a saltwater criteria for DEHP. EPA agrees that water quality factors can play a major role in the toxicity of a chemical and already uses this type of information for deriving criteria, if it is available. Although more information is needed to discern correlations between the above stated factors and the toxicity of DEHP, the limited current information on this chemical does not indicate that such correlations exist.

At the present time, states are allowed the flexibility to derive criteria with any data that are acceptable to the Guidelines and, in addition, are allowed to modify national criteria to site-specific criteria to better reflect local conditions including instances where the above factors may impact toxicity.

Commentor—The latest comprehensive literature searches for information for the DEHP document was conducted four years ago. This information document, therefore, may already be out of date. More timely literature searches should be conducted for this an criteria documents.

Response—EPA agrees that the literature search for this document is out of date and a new search was conducted in September of 1992. New information from this search has been added to the revised document.

Commentor—Many different water solubilities for DEHP are given in the published literature. How did EPA arrive at 400 ug/L as the water solubility for DEHP?

Response—Many values for DEHP water solubility are indicated in various published studies. However, only the values derived from studies specifically designed to measure water solubility were considered useable in the 1987 draft (270, 300, 340, 360 and 400 ug/L), and the highest value of 400 ug/L was chosen to provide the most liberal estimate of the amount of DEHP that would be possible in aqueous solution. However, EPA has now revised the estimate to be 334 ug/L by using the mean concentration from the five values listed above.

Commentor—The bioconcentration discussion in the document lacks information on the metabolism of DEHP by fish and reported BCF's are for total ^{14}C analyses, not DEHP.

Response—Information now included in the revised draft document for DEHP shows that DEHP can be metabolized by fish (Barron et al., 1989). The Bioconcentration Factors (BCF's) *Environmental Protection Agency: AWOC for DEHP—Page 8 of 8* reported in Table 5 of this draft are based on measurements of ^{14}C in water and tissue and most likely include concentrations of both DEHP and stable metabolites. Consequently, these factors are probably overestimating the bioaccumulation potential of DEHP in the organisms shown in table 5 of the 1987 draft document. However, since the concentrations of actual DEHP relative to the concentrations of it's metabolites are not known for the organisms listed, the bioconcentration factor are EPA's best estimate of DEHP bioaccumulation. EPA also agrees that more information is needed to better estimate DEHP bioaccumulation in aquatic organisms. Since there is no FDA action limit or an available maximum dietary intake value

derived from a chronic feeding study or a long-term field study with wildlife, a Final Residue Value (FRV) for DEHP cannot be calculated and, therefore, criteria based on a FRV cannot be derived at this time.

Dated: September 13, 1995.

Tudor T. Davies,

Director, Office of Science and Technology.

References

1. U.S. EPA; ''Quality Criteria for Water-1976''; EPA–440/9–76 023; NTIS # PB 263–943. National Technical Information Service. Springfield, VA. pp.191–192.

2. Federal Register notice November 28, 1980; 45 FR 79339.

3. U.S. EPA; ''Ambient Water Quality Criteria for Phthalate Esters'' October 1980, EPA–440/5–80–067.

4. U.S. EPA Draft ''Ambient Water Quality Criteria for Di-2-Ethylhexy1 Phthalate''; September 24, 1987; 440/5–87–013.

5. Stephen, C.E., D.I. Mount, D.J. Hansen, J.H. Gentile, G.A Chapman and W.A. Brungs. 1985; 822R85100. ''Guidelines for Deriving National Water Quality Criteria for the Protection of Aquatic organisms and Their Uses''. PB85–227049. National Technical Information Service Springfield, Va.

6. Barron, M.G., I.R. Schultz and W.L. Hayton. 1989. Presystemic brachial metabolism limits Di-2-Ethylhexyl Phthalate accumulation in fish. Toxicol. Appl. Pharmacol 98:48–57.

[FR Doc. 95–23844 Filed 9–25–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Presitge Forwarding Co., 13630 Destino Place, Cerritos, CA 90703, I Chen Chiang, Sole Proprietor

NACH 1 Air Services Incorporated, 615 South Madison Drive, Tempe, AZ 85281. Officers: Michael S. Entzminger, President, Charlotte Carpenter, Vice President

By the Federal Maritime Commission.

Dated: September 20, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–23743 Filed 9–25–95; 8:45 am]

BILLING CODE 6730–01–M′

FEDERAL TRADE COMMISSION

[Dkt. C–3593]

Nature's Bounty, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the New York-based company and two of its wholly-owned subsidiaries to pay $250,000 to the Commission for possible use for consumer redress, and requires them to have substantiation for specific health-related representations they make in advertising and promoting any product in the future.

DATES: Complaint and Order issued July 21, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Justin Dingfelder or Peter Metrinko, FTC/S–4631, Washington, DC 20580. (202) 326–3017 or 326–2104.

SUPPLEMENTARY INFORMATION: On Thursday, May 11, 1995, there was published in the Federal Register, 60 FR 25218, a proposed consent agreement with analysis In the Matter of Nature's Bounty, Inc., et al., for the purpose of soliciting public comment.

Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 95–23795 Filed 9–25–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[File No. 942–3161]

Genetus Alexandria, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Virginia-based clinic and its operators from misrepresenting the nature or extent of a physician's participation in any treatment procedure, the safety or efficacy of any treatment procedure, and the extent to which a treatment is covered by a patient's medical insurance.

DATES: Comments must be received on or before November 27, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Sondra Mills or Eric Bash, FTC/H–200, Washington, DC 20580. (202) 326–2673 or 326–2892.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Genetus Alexandria, Inc., a corporation, and Galen Medical Centers, Ltd., a corporation, and George Oprean, individually and as President and a director of Genetus Alexandria, Inc. and Galen Medical Centers, Ltd., and Linda Huffman Oprean, individually and as an officer and a director of Genetus Alexandria, Inc. and as a director of Galen Medical Centers, Ltd.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Genetus Alexandria, Inc., a corporation (''Genetus''), Galen Medical Centers,

Ltd., a corporation (''Galen''), George Oprean, individually and as President and a director of Genetus and Galen, and Linda Huffman Oprean (''Linda Oprean''), individually and as officer and a director of Genetus and as a director of Galen, and it now appearing that Genetus, Galen, George Oprean and Linda Huffman Oprean, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Genetus and Galen, by their duly authorized officers, George Oprean, individually and as President and a director of Genetus and Galen, and Linda Huffman Oprean, individually and as an officer and a director of Genetus and a director of Galen, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Genetus Alexandria, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 2843 Duke Street, Alexandria, Virginia 22314.

Proposed respondent Galen Medical Centers, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 2843 Duke Street, Alexandria, Virginia 22314.

Proposed respondent George Oprean is the President, Secretary, Treasurer and a director of Genetus and is the President and a director of Galen. He formulates, directs, controls and implements the policies, acts and practices of Genetus and Galen. His address is 2843 Duke Street, Alexandria, Virginia 22314.

Proposed respondent Linda Huffman Oprean is the Vice President and a director of Genetus and is a director of Galen.

Together with George Oprean, she formulates, directs, controls and implements the policies, acts and practices of Genetus and Galen. Her address is 2843 Duke Street, Alexandria, Virginia 22314.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, motified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

1. ''Impotence'' means the inability of a man to attain and maintain an erection of sufficient rigidity and/or duration to enable him to engage in sexual intercourse.

2. ''Treatment procedure'' means any method of treating impotence or any other medical condition, disease or symptom, including, but not limited to, injections, drug therapy, hormone replacements, use of devices to induce erections, vascular surgery, use or implantation of devices, behavior modification, counseling, psychotherapy, or any other method.

I

It is ordered That respondents Genetus Alexandria, Inc., a corporation, (''Genetus''), Galen Medical Centers, Ltd. (''Galen''), their successors and assigns, and their officers, and George Oprean, individually and as President and a director of Genetus and Galen, and Linda Huffman Oprean (''Linda Oprean''), individually and as an officer and a director of Genetus and as a director of Galen, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale or sale of any treatment procedure in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from, in any manner, directly or by implication:

A. Falsely representing in any manner, directly or by implication, that each individual purchasing any impotence treatment procedure will receive an examination by a physician, or otherwise misrepresenting the nature or extent of physician participation in any treatment procedure;

B. Falsely representing in any manner, directly or by implication, that each individual purchasing any impotence treatment procedure will receive a medical diagnosis and treatment of the underlying cause of his impotence, or otherwise misrepresenting the nature of extent of medical diagnosis or treatment provided in connection with any treatment procedure;

C. Falsely representing in any manner, directly or by implication, the qualifications, credentials, or licenses held by any person involved in providing any treatment procedure;

D. Representing in any manner, directly or by implication, that Prostaglandin E1, Papaverine, or Phentolamine, or any combination thereof, has no side-effects or contraindications, or otherwise misrepresenting the side-effects or contraindications of any drug or treatment procedure;

E. Falsely representing in any manner, directly or by implication, that any impotence treatment procedure is unqualifiedly safe, or otherwise misrepresenting the safety of any treatment procedure;

F. Falsely representing in any manner, directly or by implication, that any impotence treatment procedure will arrest impotence, or otherwise misrepresenting the efficacy or the duration of results of any treatment procedure;

G. Falsely representing in any manner, directly or by implication, the extent to which medical insurance will cover the costs of any treatment procedure;

H. Falsely representing in any manner, directly or by implication, that medical procedures were performed;

I. Falsely representing in any manner, directly or by implication, that claims submitted to insurance companies were signed, or approved for signature, by a physician;

J. Misrepresenting the safety, side-effects, or efficacy of, or the extent, nature, or duration of results of, any treatment procedure.

II

It is further ordered That respondents and their officers agents, servants, employees, attorneys, subsidiaries, affiliates, successors, assigns, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, shall take no further actions to collect any payments from customers of Genetus on any outstanding accounts receivable of Genetus; provided, however, that this Paragraph shall not prohibit respondents from fulfilling any legal obligations arising out of any *bona fide* pledge or assignment of such accounts receivable made to third party creditors of Genetus prior to September 1, 1994.

III

It is further ordered:

A. That respondents Genetus, George Oprean and Linda Oprean shall jointly and severally pay to the FTC as consumer redress the sum of $250,000; provided, however, that this liability will be suspended, subject to the provisions of subparts B and C below, upon the execution and submission to the Commission of a truthful sworn declaration by respondents Genetus, Galen, George Oprean, and Linda Oprean, in the form shown on Exhibit A to this Order, no later than three (3) days after the date of service of this Order, that shall reaffirm and attest to the truth, accuracy and completeness of the financial statement of each such respondent, each dated August 24, 1995, and previously submitted to the Commission.

B. That the Commission's acceptance of this Order is expressly premised upon the financial statements and related documents provided by respondents to the FTC referred to in subpart A above. After service upon respondents of an order to show cause, the FTC may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said financial statements and related documents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the FTC determines that there are any material misrepresentations or omissions in said financial statements and related documents showing that any of the respondents failed to disclose the existence of assets in the financial statements, that determination shall cause the entire amount of $250,000 to become immediately due and payable to the FTC, and interest computed at the rate prescribed in 28 U.S.C. 1961, as amended, shall immediately begin to accrue on any unpaid balance of this amount. Proceedings initiated under Part III are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the FTC may initiate to enforce this Order.

C. That any funds paid by respondents pursuant to subparts A and B above shall be paid into a redress fund administered by the FTC and shall be used to provide direct redress to consumers who purchased Genetus' services. If the FTC determines, in its sole discretion, that redress to consumers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

IV

It is further ordered That for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered That, for a period of five (5) years from the date of entry of this Order, respondents shall distribute a copy of this Order to each of their operating divisions, to each of their managerial employees, and to each of their officers, agents, representatives, or employees engaged in the preparation or placement of advertising or other material covered by this Order and shall secure from such person a signed statement acknowledging receipt of this Order.

VI

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

VII

It is further ordered That, for a period of ten (10) years from the date of entry of this Order, each individual respondent named herein shall promptly notify the Commission of the discontinuance of his or her present business or employment, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment.

VIII

It is further ordered That this Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such a complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this Paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IX

It is further ordered That respondents shall, within sixty (60) days after service upon them of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the requirements of this Order.

Exhibit A

In the Matter of Genetus Alexandria, Inc., a corporation, and Galen Medical Centers, Ltd., a corporation, and George Oprean, individually and as President and a director of Genetus Alexandria, Inc. and Galen Medical Centers, Ltd., and Linda Huffman Oprean, individually and as an officer and a director of Genetus Alexandria, Inc. and as a director of Galen Medical Centers, Ltd.

File No.

Declaration of

Pursuant to 28 U.S.C. 1746

Pursuant to 28 U.S.C. 1746, I, _____, hereby state that the information contained in the financial statement of _____, provided to the Federal Trade Commission on _____, 1995, was true, accurate and complete at such time.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

_____

[signature]

Analysis of Proposed Consent to Aid Public Comment

The Federal Trade Commission has accepted for comment a proposed consent order with Genetus Alexandria, Inc. (''Genetus''), Galen Medical Centers, Ltd. (''Galen''), George Oprean, and Linda Huffman Oprean (''Linda Oprean''). Under the direction and control of George Oprean and Linda Huffman Oprean, Genetus and Galen have marketed and provided impotence treatment services through clinics located in Virginia and Maryland.

The Commission has placed the proposed order on the public record for sixty days for comment by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and decide whether it should withdraw from, or make final, any or all of the proposed order.

According to the complaint, impotence is frequently a symptom or side-effect of serious diseases, such as arteriosclerosis, aneurysms, high blood pressure, diabetes, strokes, kidney disease, and spinal cord injuries. Impotence can also be a side-effect of various prescription medications and alcoholism, and can also be caused by depression, stress, anxiety, and other psychological factors.

The complaint states that impotence can be treated by various methods. Some treat the underlying physical, psychological, or behavioral, cause; others produce an erection without treating the underlying cause. According to the complaint, the only treatment offered by respondents Genetus, George Oprean, and Linda Oprean was the latter. These respondents' sole treatment method consisted of injecting the drug Prostaglandin E–1 or ''Tri-mix'' (a solution of the drugs Prostaglandin E–1, Papaverine, and Phentolamine). If injected in appropriate doses into the patient's penis, these drugs may cause an erection but do not treat the underlying cause of the impotence.

The Commission's complaint charges that respondents Genetus, George Oprean, and Linda Oprean deceptively promoted their impotence treatment services. The complaint charges that Galen is also liable for other respondent's deceptive practices because it is the successor corporation of Genetus and the alter ego of Genetus and/or George Oprean.

Alleged Misrepresentations Re: Treatments Provided. The Commission's complaint charges that respondents Genetus, George Oprean, and Linda Oprean falsely represented that each patient of Genetus would be examined by a physician, that each patient would receive a medical diagnosis and treatment of the underlying cause of his impotence, and that each patient would be evaluated and treated by a physician or other medical practitioner licensed to do so. (¶ 7) The complaint also specifically charges that respondents Genetus, George Oprean, and Linda Oprean falsely represented that Linda Oprean was a ''nurse practitioner'' under Virginia law. (¶ 11) In fact, according to the complaint, Linda Oprean was only a ''registered nurse'' under Virginia law (¶ 12), and many patients were examined, evaluated, and treated only by her. (¶ 8) Therefore, the complaint alleges that many Genetus patients were not examined by a physician, and were not evaluated or treated by a physician or other medical practitioner licensed to do so. (¶ 8) The complaint further alleges that Genetus' patients did not receive a medical diagnosis or treatment of the underlying cause of their impotence. (¶ 8) The proposed order prohibits all respondents from making the alleged false representations in connection with any ''treatment procedure,'' (¶¶ I.A., I.B., I.C.) defined to include not only procedures for treating impotence but also those for treating any other medical condition, disease or symptom. (Definitions Section, ¶ 2)

Alleged Misrepresentations Re: Efficacy and Safety. The complaint also charges that respondents Genetus, George Oprean, and Linda Oprean falsely represented that Prostaglandin E–1 has no side-effects or contraindications, and that their treatment program was unqualified safe and would arrest each patient's impotence. (¶ 9) In fact, Prostaglandin E–1 has possible side-effects, including priapism (a prolonged erection) and fibrosis of penile tissue, and its use is contraindicated for some patients. (¶ 10) The complaint further alleges that the treatment program provided by Genetus, George Oprean, and Linda Oprean was not unqualifiedly safe, and that their treatments did not arrest each patient's impotence. (¶ 10) As a remedy, the proposed order prohibits misrepresentations about the side-effects and contraindications of any drug or treatment procedure, the safety of any treatment procedure, and the

efficacy or duration of results of any treatment procedure. (¶¶ I.D., I.E., I.F.)

Alleged Misrepresentations Re: Billing Practices. The complaint further charges that respondents Genetus, George Oprean, and Linda Oprean misrepresented to patients and their insurance companies that all medical tests and laboratory procedures billed by Genetus had been performed, that all patients had been diagnosed and had services performed or ordered by a medical practitioner licensed to do so, and that all claims submitted by Genetus to insurance companies were signed or approved for signature by a physician. (¶ 13) The complaint also charges that respondents Genetus, George Oprean, and Linda Oprean also misrepresented to patients that, in most cases, the costs of their treatment program would be covered by the patients' health insurance. (¶ 15) In fact, according to the complaint, not all the medical tests and laboratory tests billed by Genetus were performed, many patients were diagnosed and had services performed or ordered by Linda Oprean, and many claims were signed by Linda Oprean without a physician's knowledge or permission. (¶ 14) For these reasons, the costs of Genetus' treatment program were not, in most cases, covered by patients' health insurance. (¶ 16) In addition, patients were otherwise responsible for paying for most or all of the amounts billed by Genetus because the amounts Genetus charged bore no reasonable relationship to the costs of certain goods and services and substantially exceeded the amount the insurers had agreed to pay for such items. (¶ 16) The proposed order prohibits all respondents from making the alleged misrepresentations. (¶¶ I.H., I.I.)

Monetary Remedies. The proposed order also prohibits all respondents from taking any action to collect any payments still owing from any customers of Genetus for any of its impotence treatment services. In addition, the proposed order requires Genetus, George Oprean, and Linda Oprean to pay consumer redress in the amount of $250,000, liability for which is suspended based upon the truthfulness and accuracy of financial statements provided to the Commission by all four respondents. If the Commission later determines that any financial statement contained any material misrepresentations or omissions, the entire amount of $250,000 is immediately due and payable.

The purpose of this analysis is to facilitate comment on the proposed consent order. This analysis is not intended to constitute an official interpretation of the agreement or proposed order, or to modify in any way its terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–23796 Filed 9–25–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 951 0090]

Hoechst AG; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: This consent agreement, accepted subject to final Commission approval, settles alleged violations of federal law prohibiting unfair or deceptive acts and practices and unfair methods of competition arising from the $7.1 billion merger of Hoechst AG and Marion Merrell Dow, Inc. The consent agreement, among other things, would require Hoechst—a pharmaceutical firm—to provide Biovail Corporation International with a letter of access to the toxicology data necessary to secure additional FDA approvals for a hypertension and cardiac drug called Tiazac (diltiazem). It would also require Hoechst to return any confidential information obtained from Biovail; to refrain from using the information; to dismiss a patent infringement lawsuit filed by Marion Merrell Dow regarding Tiazac; to withdraw a citizen petition Marion Merrell Dow filed with the Food and Drug Administration relating to Tiazac; and to agree not to file any subsequent litigation against Biovail regarding diltiazem. In addition, the consent agreement would require Hoechst to divest the rights to either Trental or Beraprost (two drugs intended to treat intermittent claudication, a painful leg cramping condition); to divest the rights to Pentasa (or the generic formulation), which is one of two oral forms of mesalamine used to treat ulcerative colitis and Crohn's Disease; and to divest the rights to Rifadin (or the generic formulation), which is used to treat tuberculosis. The required divestitures would have to be made to Commission approved entities. If they are not completed within nine months of the date on which the Commission accords final approval to the consent agreement, the consent agreement would permit the Commission to appoint a trustee to complete them.

DATES: Comments must be received on or before November 27, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, FTC/H–374, Washington, DC 20580 (202) 326–2932; or Ann Malester, FTC/S–2308, Washington, DC 20580 (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Hoechst AG, a corporation.

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the merger of Hoechst AG (''Hoechst''), through its United States subsidiary, Hoechst Corporation, and Marion Merrell Dow Inc. (''MMD''), and it now appearing that Hoechst, hereinafter sometimes referred to as ''Proposed Respondent,'' is willing to enter into an Agreement Containing Consent Order to (i) divest certain assets, (ii) cease and desist from certain acts, and (iii) provide for certain other relief:

It is hereby agreed by and between Proposed Respondent, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Proposed Respondent Hoechst is a corporation organized, existing, and doing business under and by virtue of the laws of Germany, with its principal place of business located at 65926 Frankfurt am Main, Germany.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondent's counsel, William C. Pelster, of Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022–3897, shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed Respondent has read the proposed Complaint and Order contemplated hereby. Proposed Respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the Order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final. By signing this Agreement, Proposed Respondent represents that the relief contemplated by this Agreement can be accomplished.

Order

I

It is ordered That, as used in this Order, the following definitions shall apply:

A. ''Respondent'' or ''Hoechst'' means Hoechst AG, its directors, officers, employees, agents and representatives, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Hoechst AG; subsidiaries, divisions, groups and affiliates in which Hoechst AG owns more than 25 percent of the voting securities; and the respective directors, officers, employees, agents and representatives, and the respective successors and assigns of each.

B. ''MMD'' means Marion Merrell Dow Inc., its directors, officers, employees, agents and representatives, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Marion Merrell Dow Inc.; and the respective directors, officers, employees, agents and representatives, and the respective successors and assigns of each.

C. ''Merger'' means the merger of Hoechst and MMD through the acquisition by Hoechst of the voting securities of MMD pursuant to a Stock Purchase Agreement and an Agreement and Plan of Merger both dated as of May 3, 1995.

D. ''Commission'' means the United States Federal Trade Commission.

E. ''FDA'' means the United States Food and Drug Administration.

F. ''NDA'' means new drug application.

G. ''ANDA'' means abbreviated new drug application.

H. ''Diltiazem'' means any formulation of the compound diltiazem hydrochloride used in the treatment of hypertension or angina.

I. ''Biovail'' means Biovail Corporation International, organized and existing under the laws of Canada and with its offices and principal place of business at 460 Comstock Road, Scarborough, Ontario, Canada, including its successors, licensees and assigns.

J. ''Biovail Diltiazem Products'' means the sustained release and/or extended release diltiazem products that Hoechst was developing with Biovail pursuant to the Rights Agreement that Hoechst and Biovail entered into on June 30, 1993.

K. ''Documents'' means all computer files and written, recorded, and graphic materials of every kind. The term ''documents'' includes electronic correspondence and drafts of documents, originals and all copies of documents, and copies of documents the originals of which are not in the possession, custody or control of the company.

L. ''Non-Public Information'' means any information or documents not in the public domain furnished by Biovail to Hoechst in connection with the Biovail Diltiazem Products. Non-Public Information shall not include information that subsequently becomes public or falls within the public domain through no violation of this Order by Respondent or nor shall it include information that subsequently becomes known to Respondent from a third-party not in breach of a confidential disclosure agreement.

M. ''Beraprost'' means the prostaglandin analog(s) licensed by Toray Industries, Inc. to MMD used for the treatment of peripheral arterial disease, including, but not limited to, intermittent claudication.

N. ''Beraprost Assets'' means all of MMD's U.S. assets and rights relating to the research and development, manufacture and sale of Beraprost, that are not part of MMD's physical facilities. ''Beraprost Assets'' include, but are not limited to, all rights to brand or trade name, formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, customer lists, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), software specific to MMD's Beraprost, inventory sufficient for the Acquirer to complete all safety and efficacy studies, clinical trials or bioequivalency studies necessary to obtain FDA approvals, and all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or regulatory approvals for the United States.

O. ''Trental®'' means the compound pentoxifylline marketed by Hoechst for use in the treatment of vascular disease, including, but not limited to, intermittent claudication.

P ''Trental® Assets'' means all of Hoechst's U.S. assets and rights relating to the research and development, manufacture and sale of Trental®, including the unique physical assets used by Hoechst to manufacture Trental® and all of its brand names and trade names. ''Trental® Assets'' include, but are not limited to, all rights to brand or trade name, formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, customer lists, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), software specific to Hoechst's Trental®, and all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or regulatory approvals for the United States.

Q. ''Mesalamine'' means the compound mesalamine used for the treatment of ulcerative colitis and Crohn's disease.

R. ''Mesalamine Assets'' means either (1) all of Hoechst's U.S. assets and rights relating to the research and development, manufacture and sale of mesalamine by Hoechst that are not part of Hoechst's physical facilities and that were not acquired through the Merger; or (2) all of MMD's U.S. assets and rights relating to the research and development, manufacture and sale of mesalamine by MMD, including the unique physical assets used by MMD to manufacture mesalamine and all of its brand names and trade names. ''Mesalamine Assets'' include, but are not limited to, all rights to brand or trade names, all formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), inventory sufficient for the Acquirer to complete all ongoing safety and efficacy studies, clinical trials or bioequivalency studies necessary to obtain FDA approvals and all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or regulatory approvals for the United States.

S. ''Rifampin'' means the compound rifampin used for the treatment of tuberculosis.

T. ''Rifampin Assets'' means either (1) all of Hoechst's U.S. assets and rights relating to the research and development, manufacture and sale of rifampin by Hoechst that are not part of Hoechst's physical facilities and that were not acquired through the Merger; or (2) MMD's U.S. assets and rights relating to the research and development, manufacture and sale of rifampin by MMD, including the unique physical assets used by MMD to manufacture rifampin and all of its brand names and trade names. ''Rifampin Assets'' include, but are not limited to, all rights to brand or trade names, all formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), inventory sufficient for the Acquirer to complete all ongoing safety and efficacy studies, clinical trials or bioequivalency studies necessary to obtain FDA approvals and all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or regulatory approvals for the United States.

U. ''Acquirer'' means the entity or entities to whom Hoechst shall divest the assets required to be divested pursuant to this Order.

V. ''Contract Manufacture'' means the manufacture of Trental®, mesalamine or rifampin, as applicable, by Hoechst for sale to an Acquirer in a form acceptable for commercial sale in the United States, in each form of packaging used by Respondent or MMD in the distribution and sale of such product, with information including, but not limited to, the name and identification codes of the Acquirer inscribed on the packaging, and packaged in units specified by the Acquirer, as permitted by the FDA.

W. ''Cost'' means Respondent's or MMD's actual per unit cost of manufacturing the assets to be divested pursuant to this Order.

X. ''Formulation'' means any and all information, including patent, trade secret information, technical assistance and advice, relating to the manufacture of the assets to be divested pursuant to this Order that meet FDA approved specifications therefor.

II

It is further ordered That:

A. Within seven (7) days of the date this Order becomes final:

1. Respondent shall grant to Biovail the right of reference to the pharmacology, toxicology and animal reproductive toxicology data contained in MMD's NDA No. 18–602 for Diltiazem on file with the FDA. Respondent shall make the necessary filings with the FDA authorizing the FDA to refer to the appropriate section(s) of MMD's NDA No. 18–602 for such data (including, but not limited to, pharmacology and toxicology data) in support of Biovail's NDA No. 20–401 for the Biovail Diltiazem Products, including any supplemental NDAs or related NDAs. Provided however, the right of reference granted to Biovail pursuant to this Paragraph does not constitute a general release of the data contained in MMD's NDA No. 18–602, except as it might appear in labelling.

2. Respondent shall withdraw the Citizen Petition(s) that MMD filed with the FDA relating to NDAs under section 505(b)(2) of the Food, Drug and Cosmetics Act, 21 U.S.C. 355(b)(2), including the NDA for the Biovail Diltiazem Products. Respondent shall not file any further Citizen Petition with the FDA relating to the NDA under section 505(b)(2) of the Food, Drug and Cosmetics Act, 21 U.S.C. 355(b)(2), that could have the effect of delaying the approval of the NDA for the Biovail Diltiazem Products.

3. Respondent shall file a stipulation of dismissal with prejudice to MMD of all litigation currently pending in the United States between or among MMD, Hoechst, and Biovail, including, but not limited to, *Marion Merrell Dow Inc., Carderm Capital L.P. and Elan plc* v. *Hoechst-Roussel Pharmaceuticals, Inc.*, No. 93–5074 (D.N.J), and shall not institute or cause any other person to institute any patent infringement action against Biovail relating to the Biovail Diltiazem Products.

4. Respondent shall return to Biovail all documents relating to the research, development, FDA approval, patenting, manufacture, marketing, or sale of the Biovail Diltiazem Products.

B. Respondent shall not use any Non-Public Information relating to the Biovail Diltiazem Products and shall not provide, disclose or otherwise make available to MMD any Non-Public Information relating to the Biovail Diltiazem Products.

C. The purpose of this Paragraph II is to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

III

It is further ordered That:

A. Respondent shall divest, absolutely and in good faith, within nine (9) months of the date this Order becomes final, either the Beraprost Assets or Trental® Assets.

B. Respondent shall divest the Beraprost Assets or Trental® Assets only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Beraprost Assets or Trental® Assets is to ensure continued competition between Trental® and Beraprost, in the same manner in which Trental® and Beraprost would compete absent the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

C. The time period for divestiture pursuant to this Paragraph III of this Order shall be tolled if and when Respondent:

1. Provides to the Commission objective evidence, including, but not limited to, results of clinical trials, indicating that, based on a compound's medical profile, and through no fault of Respondent, the Beraprost Assets are not viable or marketable; and

2. Petitions the Commission to modify this Order, pursuant to section 5(b) of the FTC Act and § 2.51 of the Commission's rules of practice, based on the circumstances described in Paragraph III.C.1 of this Order.

This tolling of the time period for divestiture shall end when the Commission rules on Respondent's petition to modify this Order.

IV

It is further ordered That:

A. Respondent shall divest, absolutely and in good faith, within nine (9) months of the date this Order becomes final, the Mesalamine Assets.

B. Respondent shall divest the Mesalamine Assets only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Mesalamine Assets is to ensure continued competition between Hoechst's mesalamine and MMD's mesalamine, in the same manner in which these compounds would compete absent the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

V

It is further ordered That:

A. Respondent shall divest, absolutely and in good faith, within nine (9) months of the date this Order becomes final, the Rifampin Assets.

B. Respondent shall divest the Rifampin Assets only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Rifampin Assets is to ensure continued competition between Hoechst's rifampin and MMD's rifampin, in the same manner in which these compounds would compete absent the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

VI

It is further ordered That:

A. Upon reasonable notice and request from the Acquirer(s) to Hoechst, Hoechst shall provide information, technical assistance and advice to the Acquirer(s) with respect to any assets divested pursuant to this Order such that the Acquirer(s) will be capable of continuing all applicable research, development and manufacturing. Such assistance shall include reasonable consultation with knowledgeable employees of Hoechst and training at the Acquirer's facility for a period of time sufficient to satisfy the Acquirer's management that its personnel are adequately knowledgeable about the assets divested pursuant to this Order. However, Respondent shall not be required to continue providing such assistance for more than twelve (12) months after divestiture of such assets. Respondent may require reimbursement from the Acquirer(s) for all of its own direct costs incurred in providing the services required by this Subparagraph. Direct costs, as used in this Subparagraph, means all actual costs incurred exclusive of overhead costs. If an Acquirer hires any of Respondent's officers, directors, agents, or employees whose work relates to a divested asset being acquired by the Acquirer, Respondent shall waive any confidentiality or non-competition employment rights relating to assets divested pursuant to this Order that Respondent has against such employee.

B. Pending divestiture of the assets to be divested pursuant to this Order, Respondent shall:

1. Take such actions as are necessary to prevent the destruction, removal, wasting, deterioration or impairment of the assets to be divested pursuant to this Order, except for ordinary wear and tear; and

2. Maintain research and development of the assets required to be divested by this Order, at the levels planned by either Hoechst or MMD for such assets as of June 1, 1995.

C. Hoechst shall maintain the physical assets, if any exist, necessary to manufacture Trental®, Beraprost, mesalamine and rifampin, until Respondent's obligations pursuant to Paragraphs III, IV, V, VI and VII of this Order have been fulfilled. The maintenance of physical assets described in this subparagraph shall not exceed two (2) years following divestitures pursuant to Paragraphs III, IV and V of this Order.

D. Respondent shall obtain from each Acquirer a certification of the Acquirer's good faith intention to obtain in an expeditious manner all necessary FDA approvals to manufacture and sell in the United States the assets to be divested pursuant to this Order and a commitment by the Acquirer to use reasonable diligence to continue to research and develop the assets to be divested pursuant to this Order for sale in the United States.

VII

It is further ordered That:

A. If Respondent fulfills its obligations pursuant to this Order by divesting assets relating to a product for which the FDA has issued either approval of a NDA or an ANDA (hereinafter Divested Product), Respondent shall execute an Agreement (hereinafter Divestiture Agreement) with the Acquirer of such Divested Product.

B. Each Divestiture Agreement shall include the following and Respondent shall commit to satisfy the following:

1. Respondent shall Contract Manufacture and deliver to the Acquirer in a timely manner the requirements of the Acquirer for the Divested Product at Respondent's or MMD's Cost for a period not to exceed five (5) years from the date the Divestiture Agreement is approved, or six (6) months after the date the Acquirer obtains all necessary FDA approvals to manufacture the Divested Product for sale in the United States, whichever is earlier.

2. Respondent shall commence delivery of the Divested Product to the Acquirer within two (2) months from the date the Commission approves the Acquirer and the Divestiture Agreement.

3. After Respondent commences delivery of the Divested Product to the Acquirer pursuant to Paragraph VII.B.2 of this Order, all inventory of the Divested Product produced by Respondent for the U.S. market at the facility that produced such Divested Product, regardless of the date of its

production, may be sold by Respondent only to the Acquirer.

4. Respondent shall make representations and warranties to the Acquirer that the Divested Product Contract Manufactured by Respondent for the Acquirer meets the FDA approved specifications therefor and is not adulterated or misbranded within the meaning of the Food, Drug and Cosmetic Act, 21 U.S.C. 321, *et seq.* Respondent shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Divested Product Contract Manufactured by Respondent to meet FDA specifications. This obligation shall be contingent upon the Acquirer giving Respondent prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting Respondent to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require Respondent to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondent to the Acquirer.

5. During the term of Contract Manufacturing, upon reasonable request by the Acquirer, Respondent shall make available to the trustee appointed pursuant to Paragraph VIII.A. of this Order all records kept in the normal course of business that relate to the cost of manufacturing the Divested Product.

VIII

It is further ordered That:

A. Within forty-five (45) days of the date this Order becomes final, the Commission shall appoint a trustee to ensure that Respondent expeditiously performs its responsibilities required by this Order. Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities under this Paragraph:

1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Within ten (10) days after the appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the trustee all the rights and powers necessary to permit the trustee to assure Respondent's compliance with the terms of this Order, including the rights and powers necessary to divest assets, if the trustee is so directed by the Commission. As part of the trustee agreement, the trustee shall execute confidentiality agreement(s) with Respondent.

3. The trustee shall serve until either (a) the Acquirer(s) has filed a complete application with the FDA for approval to manufacture and sell a product(s) based on the Trental® Assets or the Beraprost Assets, the Rifampin Assets and the Mesalamine Assets, as applicable; (b) the trustee determines that the Acquirer(s) has abandoned its efforts to obtain FDA approval to manufacture and sell a product(s) based upon the Trental® Assets or the Beraprost Assets, the Rifampin Assets and the Mesalamine Assets, as applicable; or (c) the trustee determines that the Acquirer(s) has failed to exercise reasonable diligence in research and development toward obtaining FDA approval to manufacture and sell a product(s) based upon the Trental® Assets or the Beraprost Assets, the Rifampin Assets and the Mesalamine Assets, as applicable, which lack of diligence will have been certified to and accepted by the Commission, whichever comes first. The trustee's service shall continue for no more than two (2) years following divestiture of the Trental® Assets or the Beraprost Assets, the Rifampin Assets and the Mesalamine Assets, as applicable.

4. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information related to the Trental® Assets or the Beraprost Assets, the Rifampin Assets and the Mesalamine Assets, or to any other relevant information, as the trustee may reasonably request, including, but not limited to, all records kept in the normal course of business that relate to the research and development of and the cost of manufacturing Trental® or Beraprost, mesalamine and rifampin. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of his or her responsibilities pursuant to this Order.

5. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all expenses incurred. The Commission shall approve the account of the trustee, including fees for his or her services.

6. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

7. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph VIII.A. of this Order.

8. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the requirements of this Order.

9. The trustee shall report in writing to Respondent and the Commission every one hundred and eighty (180) days concerning the trustee's obligations pursuant to this Paragraph VIII.

B. Respondent shall comply with all reasonable directives of the trustee regarding Respondent's obligations to comply with this Order.

C. The trustee may require Respondent to manufacture Beraprost for use by the Acquirer in conducting clinical trials or other actions as required by the FDA if:

1. the Acquirer has depleted its inventory of Beraprost acquired pursuant to the divestiture;

2. the Acquirer has a need to conduct further trials or studies prior to submission of an application to the FDA to manufacture and sell a product based on the Beraprost Assets; and

3. despite good faith efforts to establish its own manufacturing capability for Beraprost, the Acquirer has not succeeded in doing so as of the time Beraprost is needed for such

clinical trials or other actions as required by the FDA.

The trustee shall determine reasonable compensation for Respondent, based upon the costs of manufacture for such production.

IX

It is further ordered That:

A. If Respondent has not divested, absolutely and in good faith and with the Commission's prior approval, (1) either the Trental® Assets or the Beraprost Assets; (2) the Mesalamine Assets; and (3) the Rifampin Assets, within the time required by Paragraphs III.A., IV.A., and V.A. of this Order, the Commission may direct the trustee appointed pursuant to Paragraph VIII of this Order to accomplish any divestiture required pursuant to this Order. Neither the decision of the Commission to direct the trustee nor the decision of the Commission not to direct the trustee to divest the assets required to be divested shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order. Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities under this Paragraph:

B. If the trustee is directed under Subparagraph A. of this Paragraph to divest any assets, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall extend the authority and responsibilities of the trustee appointed under Paragraph VIII of this Order to include divesting any assets required to be divested by this Order that have not been divested.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest any assets required to be divested pursuant to this Order that have not been divested.

3. Within ten (10) days after the extension of the trustee's authority and responsibilities, Respondent shall amend the existing trust agreement in a manner that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the extension of the trustee's authorities and responsibilities as described in Paragraph IX.B.3 to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture(s) or believes that divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information related to the assets to be divested by the trustee, or to any other relevant information, as the trustee may reasonably request, including, but not limited to, all records kept in the normal course of business that relate to the research and development of, and the cost of manufacturing, Trental®, Beraprost, mesalamine and rifampin. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest at no minimum price; to assure that Respondent enters into Divestiture Agreement(s) that comply with the provisions of Paragraph VII; to assure that Respondent and the Acquirer(s) comply with the remaining provisions of this Order. The divestitures and the Divestiture Agreement(s) shall be made in the manner set forth in Paragraphs III, IV, V, VI and VII of this Order; provided, however, that if the trustee receives bona fide offers from more than one acquiring entity for any of the assets to be divested pursuant to this Order, and if the Commission determines to approve more than one such acquiring entity for any of the assets to be divested pursuant to this Order, the trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph VIII.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

11. The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture(s) required by this Order.

12. If a divestiture application filed pursuant to Paragraph III.A. is pending before the Commission, and Respondent petitions the Commission to modify this Order based on the conditions in Paragraph III.C., then the Commission shall not approve the divestiture application until it rules on the petition to modify.

X

It is further ordered That, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent, relating to any matters contained in this Order; and

B. Upon five (5) days' notice to Respondent, and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present regarding such matters.

XI

It is further ordered That, within sixty (60) days after the date this Order becomes final and every sixty days (60) days thereafter until Respondent has fully complied with the provisions of Paragraphs II, III, IV, V, VI and VII of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II, III, IV, V, VI and VII of this Order, including a description of all substantive contacts or negotiations for accomplishing the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

XII

It is further ordered That Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent such as dissolution, assignment, sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a proposed Consent Order (''Order'') from Hoechst AG (''Hoechst''), which remedies the anticompetitive effects of Hoechst's merger with Marion Merrell Dow Inc. (''MMD''). The proposed order requires Hoechst to divest assets and undertake certain actions to restore competition in four separate markets: (1) Once-a-day diltiazem, (2) drugs for the treatment of intermittent claudication, (3) oral dosage forms of mesalamine, and $4) rifampin.

The proposed Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On June 28, 1995, Hoechst merged with Marion Merrell Dow, which was formerly 71% owned by The Dow Chemical Company. Hoechst was permitted to complete the merger prior to the conclusion of the Commission's investigation under the terms of a Hold Separate Agreement, which provided that Marion Merrell Dow would be operated separately from Hoechst until the conclusion of the investigation. As a further condition to the Commission allowing Hoechst to consummate the merger, Hoechst agreed to accept the terms of the proposed Order if after the conclusion of its investigation, the Commission determined that the proposed Order was necessary.

The proposed complaint alleges that the merger violates section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the FTC Act, as amended, 15 U.S.C. 45, in four markets in the United States: (1) The research, development, manufacture and sale of once-a-day diltiazem; (2) the research, development, manufacture and sale of drugs for the treatment of intermittent claudication; (3) the research, development, manufacture and sale of oral dosage forms of mesalamine; and (4) the research, development, manufacture and sale of rifampin.

The proposed Order would remedy the alleged violations. First, in the market for once-a-day diltiazem the proposed Order facilitates effective competition in the once-a-day diltiazem market. MMD markets the leading once-a-day diltiazem product, Cardizem® CD, which is used to treat hypertension and angina. In 1993, Hoechst and MMD began the negotiations that culminated in the merger of the two companies. At the same time, Hoechst and Biovail Corporation International (''Biovail'') were developing, Tiazac®, a once-a-day diltiazem product intended to compete directly with MMD's Cardizem® CD. The Hoechst-MMD merger negotiations affected Hoechst's incentives to develop Tiazac® as an independent competitor to Cardizem® CD, delaying and impeding entry of Tiazac® into the market. Just before the merger was announced, Hoechst returned its rights to Tiazac®. However, this purported ''fix-it-first'' failed to remedy the anticompetitive effects resulting from the merger.

Under the proposed Order, Hoechst is required, within seven days of the date the Order becomes final, to provide Biovail with a letter of access to the toxicology data necessary to secure additional Food and Drug Administration (''FDA'') approvals for Tiazac®. In addition, the proposed Order requires Hoechst to return any confidential information obtained from Biovail in the course of their relationship, to refrain from using this information, to dismiss a patent infringement lawsuit filed by MMD relating to Tiazac®, and to withdraw a Citizen Petition filed with the FDA by MMD relating to Tiazac®. These provisions will remedy the loss of competition that resulted from the merger.

Second, in the market for drugs for the treatment of intermittent claudication, Hoechst markets Trental®, the only drug currently approved by the FDA for the treatment of this disease, which is painful leg cramping as a result of arteriosclerosis. MMD was developing Beraprost, one of only a few drugs in development for the treatment of intermittent claudication. Thus, the merger eliminates significant potential competition between Trental® and Beraprost. The proposed Order would remedy the alleged violation by requiring Hoechst to divest either Trental® or Beraprost. Hoechst must accomplish the divestiture to a Commission-approved acquirer within nine months.

Third, in the market for oral dosage forms of mesalamine, MMD markets Pentasa®, one of two oral forms of mesalamine available for the treatment of the gastrointestinal diseases of ulcerative colitis and Crohn's Disease. Hoechst was one of only a few firms developing a generic formulation of mesalamine. Therefore, the merger eliminates significant potential competition between these two products. The proposed Order requires Hoechst, within nine months, to divest either Pentasa® or the generic formulation in development to a Commission-approved acquirer.

Fourth, in the market for rifampin, which is used to treat tuberculosis, MMD markets Rifadin®. Hoechst was one of only a few firms developing a generic formulation of rifampin. Thus, the merger eliminates significant potential competition between these two products. The proposed Order requires Hoechst, within nine months, to divest either Rifadin® or the generic formulation of rifampin in development, to a Commission-approved acquirer.

The proposed Order also provides for the appointment of a trustee to assure that Hoechst appropriately completes the required divestitures. If Hoechst fails to divest any of the products within nine months, then the trustee's authority may be extended to include responsibility for accomplishing the required divestitures. The Order also requires Hoechst to provide technical assistance and advice to assist the purchaser(s) in obtaining FDA approval to manufacture and sell the divested products.

Under the provisions of the Order, Hoechst is also required to provide to the Commission a report of compliance with the divestiture provisions of the Order within sixty (60) days following the date the Order becomes final, and every sixty (60) days thereafter until Hoechst has completed the required divestitures. The Order also requires Hoechst to notify the Commission at least thirty (30) days prior to any change in the structure of Hoechst resulting in the emergence of a successor.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–23797 Filed 9–25–95; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Arthritis Advisory Committee

Date, time, and place. October 11, 1995, 8 a.m., Holiday Inn—Gaithersburg, Whetstone Ballroom, Two Montgomery Village Ave., Gaithersburg, MD, and October 12, 1995, 8:30 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, October 11, 1995, 8 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; open committee discussion, October 12, 1995, 8:30 a.m. to 9:30 a.m.; open public hearing, 9:30 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 4:30 p.m.; Isaac F. Roubein or Kathleen Reedy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Arthritis Advisory Committee, code 12532.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 29, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 11, 1995, the committee will consider issues presented in a citizen petition submitted by the Health Research Group of Public Citizen (Docket No. 94P–0458/CP1). The petition requests that FDA remove from the market drug products containing piroxicam, a nonsteroidal anti-inflammatory drug (NSAID), stating that the drug presents a significantly higher risk of gastropathy than other drugs in its class. The committee will examine safety data for the drug and advise FDA on whether piroxicam should be withdrawn from the market, whether changes in the drugs' labeling should be made, or whether no action need be taken. On October 12, 1995, the committee will examine the adequacy of the current gastropathy warnings in labeling for the class of NSAID's.

Food Advisory Committee

Date, time, and place. October 11 and 12, 1995, 9 a.m., Disabled American Veterans, Denvel D. Adams National Service and Legislative Headquarters, 807 Maine Ave. SW., Washington, DC. Seating for this meeting is limited. If you plan to attend, please call a contact person listed below to reserve a seat.

Type of meeting and contact person. Open committee discussion, October 11, 1995, 9 a.m. to 4 p.m.; open public hearing, October 12, 1995, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4 p.m.; Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727, or Catherine M. DeRoever, Advisory Committee Staff (HFS–22), 202–205–4251, FAX 202–205–4970, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Food Advisory Committee, code 10564.

General function of the committee. The committee provides advice on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in

writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person by close of business September 29, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. If necessary, comments may be limited to 5 minutes.

Open committee discussion. A working group will consider the significance and extent of the serious adverse events associated with the consumption of food products containing a source of ephedrine alkaloids, including ephedrine, pseudoephedrine, and norpseudoephedrine from *Ephedra sinica* Stapf. and other related species (e.g., Ma huang and Chinese ephedra). More detailed information regarding the meeting agenda that may become available prior to the meeting and on the availability of background materials will be provided to the public via the 800 number given above.

Psychopharmacologic Drugs Advisory Committee

Date, time, and place. October 16, 1995, 8:30 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5521, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Psychopharmacologic Drugs Advisory Committee, code 12544.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 9, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the safety and effectiveness of REMERON® (mirtazapine), new drug application (NDA) 20–415, Organon, Inc., for use in the treatment of depression.

Oncologic Drugs Advisory Committee

Date, time, and place. October 16 and 17, 1995, 8 a.m., Quality Hotel, Maryland Room, 8727 Colesville Rd., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, October 16, 1995, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 5 p.m.; open public hearing, October 17, 1995, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 5 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Oncologic Drugs Advisory Committee, code 12542.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 12, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 16, 1995, the committee will discuss: (1) NDA 20–497, Fareston® (toremifene, Orion Corp.) for treatment of advanced breast cancer in postmenopausal women and (2) NDA 20–541, Arimidex® (anastrozole, Zeneca Pharmaceuticals) as ''a selective aromatase inhibitor for the treatment of postmenopausal women with advanced breast cancer who develop progressive disease while receiving tamoxifen.'' On October 17, 1995, the committee will discuss: (1) NDA 20–449, Taxotere® (docetaxel, Rhone-Poulenc Rorer) for treatment of ''patients with locally advanced or metastatic breast carcinoma in whom previous therapy has failed; prior therapy should have included an anthracycline unless clinically contraindicated,'' and (2) product license application 91–0209, CEA–Scan™ (arcitumomab, Immunomedics, Inc.) ''for diagnostic imaging in pre-surgical patients who are being considered for resection of recurrent/metastatic colorectal cancer and, in combination with standard diagnostic modalities (SDM), for more accurate localization of carcinoembryonic antigen (CEA)-producing colorectal cancers.''

Ophthalmic Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. October 19 and 20, 1995, 8:30 a.m., Holiday Inn—Gaithersburg, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn—Gaithersburg. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Ophthalmic Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Ed Rugenstein, Sociometrics, Inc., 8300 Colesville Rd., suite 550, Silver Spring, MD 20910, 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Open public hearing, October 19, 1995, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open public hearing, October 20, 1995, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Ophthalmic Devices Panel, code 12396.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the

committee. Those desiring to make formal presentations should notify the contact person before September 30, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 19, 1995, the committee will discuss general issues relating to premarket approval applications (PMA's) for retinal tamponades used for the treatment of complicated retinal detachments. On October 20, 1995, the committee will discuss general issues relating to a PMA for an excimer laser for photorefractive keratectomy. General updates will include the redraft of the myopia refractive laser guidance document.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. October 19 and 20, 1995, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD. Parking in the Clinical Center visitor area is reserved for Clinical Center patients and their visitors. If you must drive, please use an outlying lot such as Lot 41B. Free shuttle bus service is provided from Lot 41B to the Clinical Center every 8 minutes during rush hour and every 15 minutes at other times.

Type of meeting and contact person. Open public hearing, October 19, 1995, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, October 20, 1995, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211, or Valerie M. Mealy, Advisors and Consultants Staff, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Cardiovascular and Renal Drugs Advisory Committee, code 12533.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 6, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 19, 1995, the committee will discuss NDA: 20–491, ibutilide (Convert®, The Upjohn Co.), for conversion of atrial flutter and atrial fibrillation, and NDA 20–546, vasoprost (Alprostadil® Schwarz-Pharma Kremers Urban) for severe peripheral arterial occlusive disease to reduce the incidence of leg amputations in nondiabetic patients. On October 20, 1995, the committee will discuss ''Anti-hypertensive Agents; Guidelines for Therapy.''

Joint Meeting of the Anti-Infective Drugs Advisory Committee and the Gastrointestinal Drugs Advisory Committee

Date, time, and place. October 26, 1995, 8:30 a.m., Holiday Inn—Gaithersburg, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Ermona B. McGoodwin or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Anti-Infective Drugs Advisory Committee, code 12530.

General function of the committees. The Anti-Infective Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders. The Gastrointestinal Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 20, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committees will meet jointly to discuss treatment of *Helicobacter pylori* to reduce peptic ulcer recurrence and to discuss resistance implications of widespread *Helicobacter pylori* treatment.

Anti-Infective Drugs Advisory Committee

Date, time, and place. October 27, 1995, 8:30 a.m., Holiday Inn—Gaithersburg, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Ermona B. McGoodwin or Mary Elizabeth Donahue, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Anti-Infective Drugs Advisory Committee, code 12530.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 20, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the diagnosis of *Helicobacter pylori* related gastrointestinal disease and resistance implications of widespread *Helicobacter pylori* treatment.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee

discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 19, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–23738 Filed 9–25–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPD–824–N]

Medicare Program; Update of Ambulatory Surgical Center (ASC) Payment Rates Effective for Services On or After October 1, 1995

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice implements section 1833(i)(2)(C) of the Social Security Act, which mandates an automatic inflation adjustment to Medicare payment amounts for ambulatory surgical center (ASC) facility services during the years when the payment amounts are not updated based on a survey of the actual audited costs incurred by ASCs.

EFFECTIVE DATE: The payment rates contained in this notice are effective for services furnished on or after October 1, 1995.

Copies: To order copies of the Federal Register containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the Federal Register document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the Federal Register.

FOR FURTHER INFORMATION CONTACT: Joan Haile Sanow, (410) 786–5723.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that benefits under the Medicare Supplementary Medical Insurance program (Part B) include services furnished in connection with those surgical procedures that, under section 1833(i)(1)(A) of the Act, are specified by the Secretary and are performed on an inpatient basis in a hospital but that also can be performed safely on an ambulatory basis in an ambulatory surgical center (ASC), in a rural primary care hospital, or in a hospital outpatient department. To participate in the Medicare program as an ASC, a facility must meet the standards specified under section 1832(a)(2)(F)(i) of the Act and 42 CFR 416.25, which set forth basic requirements for ASCs.

Generally, there are two elements in the total charge for a surgical procedure: A charge for the physician's professional services for performing the procedure, and a charge for the facility's services (for example, use of an operating room). Section 1833(i)(2)(A) of the Act authorizes the Secretary to pay ASCs a prospectively determined rate for facility services associated with covered surgical procedures. ASC facility services are subject to the usual Medicare Part B deductible and coinsurance requirements. Therefore, participating ASCs are paid 80 percent of the prospectively determined rate for facility services, adjusted for regional wage variations. This rate is intended to represent our estimate of a fair payment that takes into account the costs incurred by ASCs generally in providing the services that are furnished in connection with performing the procedure. Currently, this rate is a standard overhead amount that does not include physician fees and other medical items and services (for example, durable medical equipment for use in the patient's home) for which separate payment may be authorized under other provisions of the Medicare program.

We have grouped procedures into nine groups for purposes of ASC payment rates. The ASC facility payment for all procedures in each group is established at a single rate

adjusted for geographic variation. The rate is a standard overhead amount that covers the cost of services such as nursing, supplies, equipment, and use of the facility. (For an indepth discussion of the methodology and rate-setting procedures, see our Federal Register notice published on February 8, 1990, entitled ''Medicare Program; Revision of Ambulatory Surgical Center Payment Rate Methodology'' (55 FR 4526).)

Statutory Provisions

Section 1833(i)(2)(A) of the Act requires the Secretary to review and update standard overhead amounts annually. Section 1833(i)(2)(A)(ii) requires that the ASC facility payment rates result in substantially lower Medicare expenditures than would have been paid if the same procedure had been performed on an inpatient basis in a hospital. Section 1833(i)(2)(A)(iii) requires that payment for insertion of an intraocular lens (IOL) include an allowance for the IOL that is reasonable and related to the cost of acquiring the class of lens involved.

Under section 1833(i)(3)(A), the aggregate payment to hospital outpatient departments for covered ASC procedures is equal to the lesser of the following two amounts:

- The amount paid for the same services that would be paid to the hospital under section 1833(a)(2)(B) (that is, the lower of the hospital's reasonable costs or customary charges less deductibles and coinsurance); or
- The amount determined under section 1833(i)(3)(B)(i) based on a blend of the lower of the hospital's reasonable costs or customary charges, less deductibles and coinsurance, and the amount that would be paid to a free-standing ASC in the same area for the same procedures.

Under section 1833(i)(3)(B)(i), the blend amount for a cost reporting period is the sum of the hospital cost proportion and the ASC cost proportion. Under section 1833(i)(3)(B)(ii), the hospital cost proportion and the ASC cost proportion for portions of cost reporting periods beginning on or after January 1, 1991 are 42 and 58 percent, respectively.

We published our last update of ASC payment rates in the Federal Register on October 1, 1992 (57 FR 45544). Statutory provisions enacted after October 1, 1992 that affect ASCs include the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (Pub. L. 103–66), enacted on August 10, 1993. Section 13531 prohibited the Secretary from providing for any inflation update in the payment amounts for ASCs determined under section 1833(i)(2)(A) and (B) of the Act for fiscal years (FYs) 1994 and 1995. Section 13533 of OBRA 1993 reduced the amount of payment for an IOL inserted during or subsequent to cataract surgery in an ASC on or after January 1, 1994, and before January 1, 1999, to $150.

Section 141(a)(1) of the Social Security Act Amendments of 1994 (SSAA 1994) (Pub. L. 103–432), enacted on October 31, 1994, amended section 1833(i)(2)(A)(i) of the Act to require that, for the purpose of estimating ASC payment amounts, the Secretary survey not later than January 1, 1995, and every 5 years thereafter, the actual audited costs incurred by ASCs, based upon a representative sample of procedures and facilities.

Section 141(a)(2) of SSAA 1994 added section 1833(i)(2)(C) to the Act to provide that, beginning with FY 1996, there be an automatic application of an inflation adjustment during a fiscal year when the Secretary does not update ASC rates based on survey data of actual audited costs. Section 1833(i)(2)(C) of the Act provides that ASC payment rates be increased by the percentage increase in the consumer price index for urban consumers (CPI–U), as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved, if the Secretary has not updated rates during a fiscal year, beginning with FY 1996.

Section 141(a)(3) of SSAA 1994 amended section 1833(i)(1) of the Act to require the Secretary to consult with appropriate trade and professional organizations in specifying Medicare-covered ASC procedures and facility payment amounts. Section 141(b) of SSAA 1994 requires the Secretary to establish a process for reviewing the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for IOLs with respect to a class of new-technology IOLs.

ASC Survey

Regulations set forth at § 416.140 (''Surveys'') require us to survey a randomly selected sample of participating ASCs no more often than once a year to collect data for analysis or reevaluation of payment rates. In addition, section 1833(i)(2)(A)(i) of the Act requires that, for the purpose of estimating ASC payment amounts, the Secretary survey not later than January 1, 1995, and every 5 years thereafter, the actual audited costs incurred by ASCs, based upon a representative sample of procedures and facilities.

In July 1992, we mailed Form HCFA–452A, Medicare Ambulatory Surgical Center Payment Rate Survey (Part I), to the nearly 1,400 ASCs that were on file as being certified by Medicare at the end of 1991. Part I data provided baseline information for selecting a sample of 320 ASCs to complete Form HCFA–452B, Medicare Ambulatory Surgical Center Payment Rate Survey (Part II). The sample was randomly selected and is representative of ASCs nationally in terms of facility age, utilization, and surgical specialty.

Part II of the ASC survey asked for data on costs incurred by the facility that are directly related to performing certain surgical procedures, such as cataract extraction with IOL insertion, as well as information on facility overhead and personnel costs. We updated charge data for all Medicare-covered procedures performed at the facility. We audited 100 randomly selected Part II surveys between November 1994 and February 1995.

Because we are still reviewing data from Part II of the 1994 Medicare Ambulatory Surgical Center Payment Rate Survey, we are not adjusting ASC payment rates in FY 1996 to reflect these data.

II. Analysis of and Responses to the Public Comments

We published our last ASC payment rate update notice on October 1, 1992 (57 FR 45544). In response to that notice, we received one public comment. Because section 13531 of OBRA 1993 prohibited the Secretary from providing for any inflation update for FYs 1994 and 1995, we did not publish update notices for those years, and, consequently, the public comment on the October 1, 1992 notice and our response have not been published. A summary of that comment and our response will be contained in a proposed rule updating the ASC payment methodology that we expect to publish in the Federal Register next year. Because the public comment relates to the wage index, we believe the comment and our response fit more appropriately in that document, which will contain a discussion of the wage index used to adjust ASC payment rates for geographic wage differences. We did not make any changes as a result of our consideration of the public comment.

III. Provisions of This Notice

During years when the Secretary has not otherwise updated ASC rates based on a survey of actual audited costs, section 1833(i)(2) of the Act requires automatic application of an inflation adjustment. That inflation adjustment must be the percentage increase in the CPI–U as estimated by the Secretary for the 12-month period ending with the

midpoint of the year involved. (The CPI–U is a general index that reflects prices paid for a representative market basket of goods and services.)

Based on estimates prepared by Data Resources, Inc./McGraw Hill, the forecast rate of increase in the CPI–U for the fiscal year that ends March 31, 1996 is 3.2 percent. Increasing the ASC payment rates currently in effect by 3.2 percent results in the following schedule of rates that are payable for facility services furnished on or after October 1, 1995:

Group 1—$304
Group 2—$408
Group 3—$467
Group 4—$576
Group 5—$657
Group 6—$769
Group 7—$911
Group 8—$903

ASC facility fees are subject to the usual Medicare deductible and copayment requirements. Under section 13531 of OBRA 1993, the allowance for an IOL that is part of the payment rates for group 6 and group 8 is $150.

In order to implement the inflation adjustment required by section 141(a)(2) of SSAA 1994 beginning in FY 1996, we estimated the annual percent change in the CPI–U for the 12-month period ending March 31, 1996. However, the first 6 months of this 12-month period, April 1, 1995 through September 30, 1995, fall in FY 1995, and section 13531 of OBRA 1993 prohibited the Secretary from providing any inflation update in ASC payment amounts for FYs 1994 and 1995. We believe that determining, in part, the FY 1996 adjustment factor by reference to April 1, 1995 through September 30, 1995 does not violate or contradict the OBRA 1993 provision because our use of the adjustment factor applies only to payments for ASC services actually furnished beginning in FY 1996.

A ninth payment group allotted exclusively to extracorporeal shockwave lithotripsy (ESWL) services was established in the notice with comment period published December 31, 1991 (56 FR 67666). The decision in *American Lithotripsy Society v. Sullivan,* 785 F. Supp. 1034 (D.D.C. 1992), prohibits payment for these services under the ASC benefit at this time. ESWL payment rates are the subject of a separate Federal Register proposed notice, which was published October 1, 1993 (58 FR 51355).

We will continue to use the inpatient hospital prospective payment system (PPS) wage index to standardize ASC payment rates for variation due to geographic wage differences in accordance with the ASC payment rate methodology published in the February 8, 1990 Federal Register (55 FR 4526). Because ASC payment rates are updated concurrently with the annual update of the hospital inpatient PPS wage index, the PPS wage index final rule that will be implemented on October 1, 1995 will be used to adjust the ASC payment rates announced in this notice for facility services furnished beginning October 1, 1995. The policy of eliminating midyear corrections to the hospital inpatient PPS wage index applies to ASCs and the calculation of individual ASC payment amounts as well.

IV. Regulatory Impact Analysis

A. Introduction

This notice implements section 1833(i)(2) of the Act, which mandates an automatic inflation adjustment to Medicare payment amounts for ASC facility services during the years when the payment amounts are not updated based on a survey of the actual audited costs incurred by ASCs.

Actuarial estimates of the cost of updating the ASC rates by 3.2 percent are as follows:

PROJECTED ADDITIONAL MEDICARE COSTS

[In millions]*

FY 1996	$35
FY 1997	40
FY 1998	50
FY 1999	55
FY 2000	60

*Rounded to the nearest $5 million.

These amounts are in the Medicare budget baseline.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all ASCs and hospitals are considered to be small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Although we believe an impact analysis on small rural hospitals is not required, this notice may have a significant impact on a substantial number of ASCs. Therefore, we believe that a regulatory flexibility analysis is required for ASCs. In addition, we are voluntarily providing a brief discussion of the impact this notice may have on hospitals.

1. Impact on ASCs

Section 1833(i)(2) of the Act requires that we automatically adjust ASC rates for inflation during a fiscal year when we do not update ASC payment rates based on survey data. Therefore, we are updating the current ASC payment rates, which were published in our October 1, 1992 Federal Register notice (57 FR 45544), by incorporating the projected rate of change in the CPI–U for the 12-month period ending March 31, 1996, a 3.2 percent increase. There are other factors, however, that affect the actual payments to an individual ASC.

First, variations in an ASC's Medicare case mix affect the size of the ASC's aggregate payment increase. Although we uniformly adjusted ASC payment rates by the CPI–U forecast for the 12-month period ending March 31, 1996, we did not adjust the IOL payment allowance that is included in the payment rate for group 6 and group 8 because OBRA 1993 froze the amount of payment for an IOL furnished by an ASC at $150 for the period beginning January 1, 1994 through December 31, 1998. Therefore, because the net adjustment for inflation for procedures in group 6 is 2.56 percent and for group 8 is 2.66 percent, ASCs that perform a high percentage of the IOL insertion procedures that comprise these groups may expect a somewhat lower increase in their aggregate payments than ASCs that perform fewer IOL insertion procedures.

A second factor determining the effect of the change in payment rates is the percentage of total revenue an ASC receives from Medicare. The larger the proportion of revenue an ASC receives from the Medicare program, the greater the impact of the updated rates in this notice. The percentage of revenue derived from the Medicare program depends on the volume and types of services furnished. Since Medicare patients account for as much as 80 percent of all IOL insertion procedures performed in ASCs, an ASC that performs a high percentage of IOL insertion procedures will probably receive a higher percentage of its revenue from Medicare than would an ASC with a case mix comprised largely of procedures that do not involve

insertion of an IOL. For an ASC that receives a large portion of its revenue from the Medicare program, the changes in this notice will likely have a greater influence on the ASC's operations and management decisions than they will have on an ASC that receives a large portion of revenue from other sources.

In general, we expect the rate changes in this notice to affect ASCs positively by increasing the rates upon which payments are based.

2. Impact on Hospitals and Small Rural Hospitals

Section 1833(i)(3)(A) of the Act mandates the method of determining payments to hospitals for ASC-approved procedures performed in an outpatient setting. The Congress believed some comparability should exist in the amount of payment to hospitals and ASCs for similar procedures. The Congress recognized, however, that hospitals have certain overhead costs that ASCs do not and allowed for those costs by establishing a blended payment methodology. For ASC procedures performed in an outpatient setting, hospitals are paid based on the lower of their aggregate costs, aggregate charges, or a blend of 58 percent of the applicable wage-adjusted ASC rate and 42 percent of the lower of the hospital's aggregate costs or charges. According to statistics from the Office of the Actuary within HCFA, 12.7 percent of Medicare payments to hospitals by intermediaries is attributable to services furnished in conjunction with ASC-covered procedures.

We believe that, due to a variety of factors, the ASC rate increase in this notice will result in only a 0.9 percent increase in intermediary payments to hospitals for ASC-covered procedures. We would not expect an ASC rate increase in every instance to keep pace with actual hospital cost increases, although we would fully recognize cost increases resulting from inflation alone to the extent that the blended payment methodology includes aggregate hospital costs. The weight of the ASC portion of the blended payment amount, which would reflect the ASC rate increase, is offset to a degree when hospital costs significantly exceed the ASC rate. Another element that would eliminate the effect of the ASC rate increase on hospital outpatient payments is the application of the lowest payment screen in determining payments. Applying the lowest of costs, charges, or a blend can result in some hospitals being paid entirely on the basis of a hospital's costs or charges. In those instances, the increase in the ASC rates will have no effect on hospital payments. The number of Medicare beneficiaries a hospital serves and its case-mix variation would also influence the total impact of the new ASC rates on Medicare payments to hospitals. Based on these factors, we have determined, and we certify that this notice will not have a significant impact on a substantial number of small rural hospitals. Therefore, we have not prepared a small rural hospital impact analysis.

V. Waiver of 30-Day Delay in the Effective Date

We ordinarily publish notices, such as this, subject to a 30-day delay in the effective date. However, if adherence to this procedure would be impractical, unnecessary, or contrary to the public interest, we may waive the delay in the effective date. The provisions of this notice are effective for services furnished beginning on October 1, 1995, to coincide with the FY 1996 PPS updated wage index. These provisions will increase payment to ASCs by 3.2 percent (as modified by any change to the wage indices), in accordance with section 1833(i)(2) of the Act, which requires automatic application of an inflation adjustment. As a practical matter, if we allowed a 30-day delay in the effective date of this notice, ASCs would be unable to take timely advantage of the increase in payment rates contained in this notice. Moreover, we believe a delay is impractical and unnecessary because the statute, which, as explained earlier, provides that ASC payment rates be increased by the percentage increase in the CPI–U if the Secretary has not updated rates during a fiscal year beginning with FY 1996. Therefore, we find good cause to waive the delay in the effective date.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

(Sec. 1832(a)(2)(F) and 1833(i)(1) and (2) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F) and 1395l(i)(1) and (2)); 42 CFR 416.120, 416.125, and 416.130)

(Catalog of Federal Domestic Assistance Programs No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 28, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–23742 Filed 9–25–95; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Institute on Alcohol Abuse and Alcoholism.

The meetings will be open to the public, as noted below, to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ida Nestorio at (301) 443–4376.

The following meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and the rosters of committee members may be obtained from: Ms. Ida Nestorio, NIAAA Committee Management Officer, National Institute on Alcohol Abuse and Alcoholism, Willco Building, Suite 409, 6000 Executive Blvd., Rockville, MD 20892–7003, Telephone: (301) 443–4376. Other information pertaining to the meetings can be obtained from the contact person indicated.

Name of Committee: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee.

Dates of Meeting: October 11–12, 1995.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: October 11, 9 a.m. to 10:00 a.m.

Agenda: Discussion of issues related to Alcohol, Mental Health, and Drug Abuse grant review integration to DRG.

Closed: October 11, 10:00 a.m. to adjournment.

Agenda: Review, discussion and evaluation of individual research grant applications.

Contact Person: Antonio Noronha, Ph.D., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–9419.

Name of Committee: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.

Dates of Meeting: October 16–18, 1995.
Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: October 16, 9 a.m. to 10:00 a.m.
Agenda: Discussion of issues related to Alcohol, Mental Health, and Drug Abuse grant review integration to DRG.
Closed: October 16, 10:00 a.m. to adjournment.
Agenda: Review, discussion and evaluation of individual research grant applications.
Contact Person: Ronald Suddenhorf, Ph.D., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–2932.

The following meetings are totally closed:
Name of Committee: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee.
Dates of Meeting: October 19–20, 1995.
Place of Meeting: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Time: October 19, 9:00 a.m. to adjournment.
Agenda: Review, discussion and evaluation of individual research grant applications.
Contact Person: Elsie D. Taylor, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–9787.

Name of Committee: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.
Dates of Meeting: October 26–27, 1995.
Place of Meeting: River Inn, 924 25th Street, N.W., Washington, D.C. 20037.
Time: October 26, 9:00 a.m. to adjournment.
Agenda: Review, discussion and evaluation of individual research grant applications.
Contact Person: Thomas D. Sevy, M.S.W., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–6106.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.281, Scientist Development Award, Research Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.891, Alcohol Research Center Grants; National Institutes of Health).

Dated: September 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–23757 Filed 9–25–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute

Notice of Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, October 26–27, 1995, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on October 26 from 8:30 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 522b(c)(6), Title 5, U.S.C., sec. 10(d) of Pub. L. 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. to recess on October 26 and from 8:30 a.m. to adjournment on October 27 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meetings and a roster of the Council members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Rockledge Building (RKL2), Room 7100, National Institutes of Health, Bethesda, Maryland 20892, (301) 435–0260, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood and Diseases and Resources Research, National Institutes of Health.)

Dated: September 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–23756 Filed 9–25–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Demonstration and Education Research Applications.
Date: October 17–18, 1995.
Time: 9:00 a.m.
Place: Stouffer Concourse Hotel, Arlington, Virginia.
Contact Person: Louise P. Corman, Ph.D.
Purpose/Agenda: Rockledge II, Rm. 7180, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924, (301) 435–0270.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: September 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–23753 Filed 9–25–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Subcommittee: Biological and Clinical Aging Review Subcommittee A.
Date: November 8, 1995.
Time: 1:00 p.m. to adjournment.
Place: The Gateway Building, 7201 Wisconsin Avenue, 5th Floor Conference Room, Bethesda, Maryland 20852–9205.
Contact Person: Dr. Arthur Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.
Purpose/Agenda: For the review, discussion, and evaluation of individual research grant applications.

Name of Subcommittee: Biological and Clinical Aging Review Subcommittee B.
Date: October 23–25, 1995
Time: 7:00 p.m. on October 23 to adjournment on October 25.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.
Contact Person: Dr. James Harwood, Scientific Review Administrator, Gateway

Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: For the review, discussion, and evaluation of individual research grant applications.

Name of Subcommittee: Neuroscience, Behavior and Sociology of Aging Subcommittee A.

Date: November 27–30, 1995.

Time: 7:30 p.m. on November 27 to adjournment on November 30.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Drs. Maria Mannarino or Louise Hsu, Scientific Review Administrators, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: For the review, discussion, and evaluation of individual research grant applications.

Name of Subcommittee: Neuroscience, Behavior and Sociology of Aging Subcommittee B.

Date: November 6–8, 1995.

Time: 7:30 p.m. on November 6 to adjournment on November 8.

Place: Bethesda Marriott Pooks Hill, 5151 Pooks Hill, Bethesda, Maryland 20814.

Contact Person: Dr. Paul Lenz, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: For the review, discussion, and evaluation of individual research grant applications.

The meetings will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: September 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–23752 Filed 9–25–95; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Biomedical Library Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on November 8–9, 1995, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on November 8 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Roger W. Dahlen at 301–496–4221 two weeks before the meeting.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting on November 8 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on November 9 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville, Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: September 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–23751 Filed 9–25–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose: To review grant applications.

Committee Name: Minority Access to Research Careers Review Committee.

Date: October 19–20, 1995.

Time: 8:30 a.m.–6 p.m.

Place of Meeting: National Institutes of Health, 45 Center Drive, Natcher Building, Conference Room D, Bethesda, MD 20892.

Contact Person: Dr. Richard Martinez, 45 Center Drive, Room 1AS–19G, Bethesda, MD 20892.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: September 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–23750 Filed 9–25–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences.

This meeting will be open to the public as indicated below with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AS–43, Bethesda, Maryland 20892, (301) 495–7301, in advance of the meeting.

Mrs. Dieffenbach will provide a summary of each meeting and a roster of committee members upon request. Substantive program information may be obtained from the contact listed below.

Committee Name: Minority Biomedical Research Support Review Subcommittee.

Meeting Date: November 8–9, 1995.

Place: 45 Center Drive, Conference Room G, Bethesda, MD 20892–6200.

Open: November 8, 8:30–9:30 a.m.

Agenda: Special reports related to committee activities.

Closed: November 8, 9:30 a.m.–5 p.m., November 9, 8:30 a.m.–5 p.m.

Agenda: Review and evaluation of grant applications.

Contact: Dr. Michael Sesma, Scientific Review Administrator, Building 45, Room 1AS–19, National Institutes of Health, Bethesda, MD 20892.

The meeting will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal property.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862, 93.863, 93.880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: September 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–23749 Filed 9–25–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Violent Crime Control and Law Enforcement Act of 1994; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of August 29, 1995 by the Secretary of Health and Human Services to the Assistant Secretary for Health, I have delegated to the Director, Centers for Disease Control and Prevention, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under Section 318—Demonstration Grants for Community Initiatives (42 U.S.C. 10418), of the Family Violence Prevention and Services Act as added by Section 40261 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), as amended hereafter. This delegation excludes the authority to promulgate regulations and to submit reports to the Congress.

This delegation legislation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control and Prevention or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: September 14, 1995.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 95–23878 Filed 9–25–95; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office Of Inspector General

[Docket No. FR–3971–N–01]

The Performance Review Board

AGENCY: Office of Inspector General, Department of Housing and Urban Development.

ACTION: Notice of appointments.

SUMMARY: The Office of Inspector General of the Department of Housing and Urban Development (HUD) announces the appointments of Everett L. Mosely, Agency for International Development; James M. Cottos, Department of the Treasury; and Sylvia T. Horowitz, Department of Labor, as members, and Steven N. McNamara, Department of Education and Paula F. Hayes, Department of Agriculture, as alternate members, to the HUD Office of Inspector General Performance Review Board. The chairperson is to be elected from within the members. No members of the Board are from the HUD Office of Inspector General. The address of the Board is: Department of Housing and Urban Development, Office of Inspector General, Room 8254, 451 7th Street, SW, Washington, DC 20410–4500.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Joanne W. Simms, Director, Office of Human Resources, Department of Housing and Urban Development, Room 2162, 451 7th Street, SW, Washington, DC 20410–1000, telephone (202) 708–2000. (This is not a toll free number.)

Dated: September 14, 1995.

Susan Gaffney,

Inspector General Department of Housing and Urban Development.

[FR Doc. 95–23832 Filed 9–25–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1400–01; WYW–133980]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; direct sale of public lands in Lincoln County.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713:

Sixth Principal Meridian

T. 21 N., R. 116 W.,
Section 33, SW¼SW¼NE¼NE¼, S½NE¼SE¼NE¼, NW¼SE¼NE¼, SW¼SE¼NE¼, SE¼SE¼NE¼, NW¼NE¼NE¼SE¼, N½NW¼NE¼SE¼.

The above lands aggregate 45 acres.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Rawson, Area Manager, Bureau of Land Management, Kemmerer Resource Area, 312 Highway 189 North, Kemmerer, Wyoming 83101, 307–877–3933.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate of the above land to PacifiCorp. PacifiCorp currently operates a portion of a clear water pond on the subject lands. This pond provides water storage for decanting and recycling of water associated with ash ponds used for the nearby Naughton Power Plant. The proposed direct sale to PacifiCorp would be made at fair market value.

The proposed sale is consistent with the Kemmerer Resource Area Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The lands contain no other known public values. The planning document and environmental assessment covering the proposed sale are available for review at the Bureau of Land Management, Kemmerer Resource Area Office, Kemmerer, Wyoming.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals pursuant to section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

Pursuant to the authority contained in Section 4 of Executive Order 11990

dated May 24, 1977 (42 FR 26961), and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1718, 1719, this sale will be subject to a permanent restriction which constitutes a covenant running with the land for the purpose of protecting and preserving the wetland area. The land may not be used for the construction or placement of any buildings, structures, facilities, or other improvements, including fences, and that ''new construction'' on the land as defined in Section 7(b) of Executive Order 11990 is prohibited. The restriction applies to the drainage channel, which is approximately 337 feet in length and 8 feet in width, total acreage .062, located in the NW¼NE¼NE¼SE¼ of section 33, T. 21 N., R. 116 W.

There will be no cancellation of existing federal grazing rights. Those AUMs associated with the above referenced parcel will be absorbed by the operators in the balance of the Cumberland Allotment.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

For a 45 day period ending on November 13, 1995, interested parties may submit comments to the District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82901.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: September 12, 1995.

Jeffrey M. Rawson,

Area Manager.

[FR Doc. 95–23850 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–22–P

[CO–070]

Recreational Use Restrictions for the Fisher Creek Area, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Area closure and restriction order.

SUMMARY: This order closes and restricts certain recreational uses and activities on approximately 1,040 acres of reconveyed public land in the Glenwood Springs Resource Area, Grand Junction District. It establishes an Off Highway Vehicle (OHV) use designation pursuant 43 CFR 8341.2(a), and establishes rules of conduct pursuant 43 CFR 8464.1 for the use of motorized and non-motorized mechanized vehicles, cross country skiing, camping, and dogs.

The affected public land is generally located in T 6 S, R 88 W Sec 35 S½SW¼ portion south of County Rd. 115, Sec 36 SW¼SE¼; T 7 S, R 88 W, Sec 1 N½ portion west of County Rd. 114, N½SW¼, NW¼SE¼, Sec 2 S½NE¼, NW¼NE¼, NW¼, N½S½, Sec 3 E½NE¼, 6th P. M., Garfield County.

EFFECTIVE DATES: The closure and use restrictions shall be effective immediately until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: The affected land was acquired through a land exchange primarily to protect wildlife habitat and open space values, including critical winter range for deer and elk. Recreational use of the area is expected to occur as public awareness of the affected land increases, and visitor management is needed to prevent potential conflicts with wildlife habitat values, and to protect property, public lands and resources. The year round restriction on use of motor vehicles will discourage trash dumping, vandalism and other potential undesirable activities, and prevent conflicts with wintering deer and elk. Additionally, the existing roads are unmaintained and would quickly deteriorate if left open to use of vehicles. The winter restriction on cross country skiing and dogs will also reduce the amount of stress on wintering deer and elk. The camping restriction along the Fisher Cemetery Road would discourage human occupancy and help protect natural open space and wildlife habitat values.

The area, roads and trails affected by this order will be posted with appropriate regulatory signs. Information including maps of the restricted area is available in the Resource Area Office and District Office at the addresses shown below.

The Fisher Creek Area described herein will be subject to the following closure and use restrictions:

(1) All motorized vehicle use shall be prohibited year round including snowmobiles operating on snow.

(2) Non-motorized mechanized vehicle use shall be allowed on existing trails, but travel by such vehicles off the designated trails shall be prohibited. Non-motorized mechanized vehicle use shall be prohibited during the winter from December 1 to April 30.

(3) Cross country skiing shall be prohibited.

(4) Dogs shall not be brought into the area during the winter from December 1 to April 30.

(5) Camping along the Fisher Cemetery Road and within 200 ft. of water sources shall be prohibited.

Persons who are exempt from these restrictions include any Federal, State, or local officers engaged in fire, emergency and law enforcement activities; BLM employees engaged in official duties, and other persons specifically authorized to conduct or engage in the otherwise prohibited activity. The motor vehicle use restrictions do not apply to the Fisher Cemetery Road. Persons may use and operate motor vehicles on places provided for that purpose at designated public access points into the area.

PENALTIES: Violations of this closure and restriction order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Michael S. Mottice, Area Manager, Glenwood Springs Resource Area, 50629 Highway 6/24, P.O. Box 1009, Glenwood Springs, CO 81602; (970) 945–2341. Mark Morse, District Manager, Grand Junction District, 2815 H Road, Grand Junction, Colorado 81506; (970) 244–3000.

Mark Morse,

Grand Junction District Manager.

[FR Doc. 95–23854 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–84–M

[NM–040–1610–00]

Availability of Draft Texas Resource Management Plan/Environmental Impact Statement (TX RMP/EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and public hearings.

SUMMARY: The Bureau of Land Management (BLM), Tulsa District, announces the availability of the Draft Texas RMP/EIS for public review and comment. This document analyzes land use planning options for BLM managed Federal lands and minerals throughout the state of Texas.

DATES: Comments on the Draft RMP/EIS will be accepted if they are submitted or post-marked no later than January 06, 1996. Comments can be sent to: Paul Tanner, Assistant District Manager, Bureau of Land Management, 221 North Service Road, Moore, Oklahoma 73160, or submitted at one of six public hearings. The public hearings conducted to receive oral and written

comments on the Draft Texas RMP/EIS will be at the following locations:

Date	Time	City/location
December 5, 1995.	3:00 p.m .	Amarillo, Ramada Inn East, 2501 Interstate 40 East.
December 6, 1995.	3:00 p.m .	Midland, Best Western Midland, 3100 W. Wall.
December 7, 1995.	3:00 p.m .	Arlington, Arlington Hilton Hotel, 2401 E. Lamar Blvd.
December 12, 1995.	3:00 p.m .	Austin, Austin Hilton Towers, 6000 Middle Fiskville Road.
December 13, 1995.	3:00 p.m .	Houston, Hilton Southwest, 6780 Southwest Freeway.
December 14, 1995.	3:00 p.m .	Corpus Christi, Sheraton Corpus Christi Bayfront, 707 N. Shoreline Dr.

Oral testimony at these hearings will be limited to ten minutes per person. A copy of the Draft RMP/EIS will be sent to all individuals, Government agencies, and groups who have expressed interest in the Texas planning process.

SUPPLEMENTARY INFORMATION: The Draft Texas Resources Management Plan (RMP) and Environment Impact Statement (EIS) identifies and analyzes the future options for managing the Federal mineral estate situated within Texas administered by the Bureau of Land Management (BLM), Tulsa District.

The Texas RMP is being prepared using the BLM planning regulations issued under the authority of the Federal Land Policy and Management Act of 1976.

When completed, the RMP will provide a comprehensive framework for managing the Federal minerals within Texas over the next 20 years.

The contents of this Draft RMP/EIS focus on resolving one resource management issue, the leasing and development of Federal oil and gas resources in Texas.

Three RMP alternatives have been developed to describe the different management options available to the BLM for administering Federal oil and gas in Texas. These alternatives were specifically developed to respond to that issue. Each alternative presents a different level of oil and gas leasing stipulation application.

Alternative A. No Action.

This alternative represents a continuation of present resource allocation levels and management practices. This alternative provides a baseline for comparison of other alternatives, and may not adequately resolve the issues identified in the RMP/EIS.

Alternative B. Intensive Surface Protection (Agency Preferred Alternative).

This represents an alternative which would place primary emphasis on protecting important environmental values through the use of additional leasing stipulations. The goal of this alternative is to change present management direction so that identified surface resource values are considered in the leasing process in a manner that provides additional protection for valuable surface resources.

Alternative C. No Leasing.

This represents an alternative which would remove Federal oil and gas from availability for leasing and development. It would change management direction so that the issue is resolved in a manner that places highest priority on the preservation of the oil and gas resources and protection of the associated surface resources.

FOR FURTHER INFORMATION CONTACT: For further information or copies of the Draft RMP/EIS contact Brian D. Mills, RMP Team Leader, 221 North Service Road, Moore, Oklahoma 73160. Telephone: (405) 794–9624.

Dated: September 19, 1995.

Jim Sims,

District Manager.

[FR Doc. 95–23870 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–FB–M

[ID–942–1910–00–4573]

Idaho; Filing of Plats of Survey

The plats of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., September 11, 1995.

The plat, in 2 sheets, representing the dependent resurvey of portions of the subdivisional lines and subdivision of certain sections, T. 3 S., R. 34 E., Boise Meridian, Idaho, Group No. 836, was accepted, September 11, 1995.

The plat, in 3 sheets, representing the dependent resurvey of portions of south and west boundaries, subdivisional lines, subdivision of certain sections, and the 1912 meanders of the left bank of the Blackfoot River, T. 3 S., R. 35 E., Boise Meridian, Idaho, Group No. 837, was accepted, September 11, 1995.

The plat, in 2 sheets, representing the dependent resurvey of portions of the east and north boundaries, subdivisional lines, and subdivision of certain sections, T. 4 S., R. 34 E., Boise Meridian, Idaho Group No. 848, was accepted, September 11, 1995.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs, Fort Hall Agency.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: September 11, 1995.

Duane E. Olsen,

Chief, Cadastral Surveyor for Idaho.

[FR Doc. 95–23846 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Notice of Availability of a Technical/Agency Draft Recovery Plan for ''Stahlia monosperma'' for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces availability for public review of a technical/agency draft recovery plan for *Stahlia monosperma* (Cóbana negra). This species belongs to a monotypic Genus endemic to Puerto Rico and Hispaniola, and it usually grows in brackish, seasonally flooded wetlands in association with mangrove communities. The only wild populations in Puerto Rico are known from Cabo Rojo, Río Grande, and Vieques island. Coastal development threatens the remnant populations of this species. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 27, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Mr. Jorge E. Saliva, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Saliva, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622, Telephone: 809/851–7297.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened species or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Technical/Agency Draft is for *Stahlia monosperma* (cóbana negra), a tree currently known from parts of southwestern and northeastern coasts of Puerto Rico and the island of Vieques. Cóbana negra is a medium-sized evergreen tree that reaches 8 to 16 meters (25 to 50 feet) in height, and 1 to 1.5 feet in diameter. Flowers are yellow, and are produced between March and May, depending on rainfall. A thin, red, fleshy fruit is produced during late June and mid-July. Coastal development, along with its resulting dredging and filling of wetlands, poses the biggest threat to this species. This plan will describe measures necessary to recover the species, including studies of its reproductive biology and propagation.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1531.

Dated: September 14, 1995.

James P. Oland,

Field Supervisor.

[FR Doc. 95–23849 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–55–M

Draft Environmental Impact Statement for Proposed Reintroduction of Mexican Wolf to Historic Range in Southwestern United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public hearings.

SUMMARY: The U.S. Fish and Wildlife Service announces its intention to conduct public hearings on its draft Environmental Impact Statement for a proposed reintroduction of Mexican wolves to the southwestern United States. The hearings will be held in Phoenix, Arizona; Socorro, New Mexico; and Austin, Texas.

DATES: The public hearings will be held in Austin, Texas on October 12, 1995; Socorro, New Mexico, on October 18; and Phoenix, Arizona, on October 19. Times and places of the hearings will be announced in the local media and in mailings to the interested public.

ADDRESSES: Questions and comments concerning the public hearings or the draft Environmental Impact Statement should be sent to David Parsons, Mexican Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: David Parsons (see address above) at telephone (505) 248–6786; facsimile (505) 248–6922.

Background

In the June 27, 1995, Federal Register the Service announced the availability of a draft Environmental Impact Statement (EIS) for a proposal to reintroduce Mexican wolves to portions of its historic range in the southwestern United States. The locations and times of fourteen public open house meetings to be held from August 22 through September 21 were announced at that time. The public open house meetings are being held as scheduled. Written comments on the draft EIS will be accepted through October 31, 1995.

The Service will hold three formal public hearings (see locations listed under **DATES** above) in addition to the open house meetings to give organizations and individuals the opportunity to submit oral comments on the draft EIS. Oral statements recorded at these public hearings will be entered into the record and will carry the same weight as written comments in the National Environmental Policy Act process. Written comments may be sent to the Service (see address above), delivered to a Service representative at one of the public open house meetings or public hearings, hand delivered to the address above, or sent by telephone facsimile using the number listed above. Oral comments may be made at one of the public hearings.

A copy of the draft EIS or draft EIS Summary may be obtained by contacting the above address. The draft EIS Summary has been sent to everyone on the Service's mailing list for information on the Mexican Wolf Recovery Program. The draft EIS is also available for inspection at public and University libraries throughout southeastern Arizona, southern New Mexico, and southwestern Texas.

Dated: September 8, 1995.

James A. Young,

Acting Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. 95–23813 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–55–P

Marine Mammal Annual Report Availability, Calendar Year 1992

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1992 marine mammal annual report.

SUMMARY: The U.S. Fish and Wildlife Service has issued its 1992 annual report on administration of the marine mammals under its jurisdiction, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1 to December 31, 1992, and was submitted to the Congress on August 28, 1995. By this notice, the public is informed that the 1992 report is available and that interested individuals may obtain a copy by written request to the Service.

ADDRESSES: Written requests for copies should be addressed to: Publications Unit, U.S. Fish and Wildlife Service, Mail Stop 130-Webb, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Horwath, Division of Fish and Wildlife Management Assistance, Telephone (703) 358–1718.

SUPPLEMENTARY INFORMATION: The Service is responsible for eight species of marine mammals under the jurisdiction of the Department of the Interior, as assigned by the Marine Mammal Protection Act of 1972. These species are polar bear, sea and marine otters, walrus, manatees (three species)

and dugong. The report reviews the Service's marine mammal-related activities during the report period. Administrative actions discussed include appropriations, marine mammals in Alaska, endangered and threatened marine mammal species, law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies and international activities.

Dated: September 19, 1995.

John G. Rogers, Jr.,

Acting Director.

[FR Doc. 95–23768 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–55–M

Klamath Fishery Management Council Meeting

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 8 a.m. to 5 p.m. on Thursday, October 12, 1995.

PLACE: The meeting will be held at the Miner's Inn Convention Center, 122 East Miner, Yreka, California 96097.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 1215 South Main, Yreka, California 96097–1006, (916–842–5763).

SUPPLEMENTARY INFORMATION: The principal agenda item at this meeting will be hearing a retrospective on the 1995 salmon fishing season from ocean recreational salmon fishing representatives, tribal fishing representatives, in-river recreational representatives, and from California and Oregon government representatives.

The Council will also hear reports on the status of the salmon and water resources. This information will be used as a starting point for technical assignments to develop options for the 1996 salmon harvest season.

For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the Federal Register on July 8, 1987 (52 FR 25639).

Dated: September 19, 1995.

Don Weathers,

Acting Regional Director.

[FR Doc. 95–23871 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf, Alaska Region, Beaufort Sea Lease Sale 144

AGENCY: Minerals Management Service, Interior.

ACTION: Reschedule of dates and times of public hearings.

On August 23, 1995, a notice appeared in the Federal Register (Vol. 60, No. 163, pages 43813–4) announcing the availability of the draft Environmental Impact Statement and the locations, dates, and times of public hearings for proposed oil and gas lease Sale 144 in the Beaufort Sea, Alaska.

In response to subsequent requests by community leaders in Nuiqsut and Kaktovik, Alaska, the hearings in Nuiqsut, Kaktovik, and Barrow have been rescheduled to the following dates and times.

November 6, 1995: Kisik Community Center, Nuiqsut, Alaska, 7:00 p.m.

November 7, 1995: Community Building, Kaktovik, Alaska, 6:00 p.m.

November 8, 1995: North Slope Borough Assembly Chambers, Barrow, Alaska, 7:30 p.m.

The date and time for the hearing in Anchorage, Alaska, remain unchanged.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings are asked to contact the Regional Director at the Alaska Regional Office, 949 East 36th Avenue, Anchorage, Alaska 99503–4302, or Ray Emerson by telephone (907) 271–6650 or toll free 1–800–764–2627 by October 20, 1995. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until November 20, 1995.

Dated: September 19, 1995.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 95–23830 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf, Beaufort Sea Natural Gas and Oil Lease Sale 144

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notice of sale.

Outer Continental Shelf (OCS); Notice of Availability of the Proposed Notice of Sale for proposed Natural Gas and Oil Lease Sale 144 in the Beaufort Sea. This Notice of Availability is published pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to natural gas and oil leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for proposed Sale 144 may be obtained by written request to the Public Information Unit, Alaska OCS Region, Minerals Management Service (MMS), 949 E. 36th Avenue, Anchorage, Alaska 99508–4302 or by telephone at (907) 261–4010.

The final Notice of Sale will be published in the Federal Register at least 30 days prior to the date of bid opening scheduled for mid-1996.

Dated: September 15, 1995.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 95–23831 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Final Environmental Impact Statement/ General Management Plan Joshua Tree National Park, California; Notice of Approval of Record of Decision

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–90, as amended) and regulations promulgated by the Council on Environmental Quality (40 CFR Part 1505.2), the Department of the Interior, National Park Service has approved a Record of Decision on the Final Environmental Impact Statement for the General Management Plan of Joshua Tree National Park.

The National Park Service will implement the selected plan, identified as the proposal in the Final Environmental Impact Statement for the General Management Plan, issued in July, 1995.

Copies of the approved Record of Decision may be obtained from the Superintendent, Joshua Tree National Park, 74485 National Park Dr., Twentynine Palms, California, 92277, or via telephone request to the park at (619) 367–4528.

September 12, 1995.

Patricia L. Neubacher,

Field Director, Pacific West Area.

[FR Doc. 95–23873 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–70–P

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Wednesday, October 18, 1995; 1:30 p.m. until 4:30 p.m.

ADDRESSES: Commission Offices, 10 E. Church Street, Bethlehem, PA 18018.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Acting Executive Director, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 E. Church Street, Room P–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: September 15, 1995.

Donald M. Bernhard,

Chairman, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 95–23875 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 16, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by October 11, 1995.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

ALASKA

Fairbanks North Star Borough-Census Area

F. E. Company Machine Shop, 612 Illinois St., Fairbanks, 95001164

ARKANSAS

Drew County

Taylor Log House and Site, AR 138 W of Winchester, Winchester vicinity, 95001168

FLORIDA

Glades County

Moore Haven Downtown Historic District, 3–99 Ave. J., 100 First St. and Lone Cypress Park, Moore Haven, 95001166

MASSACHUSETTS

Bristol County

South Washington Street Historic District, 145–327 S. Washington St. and 1–6 Hunting St., North Attleborough, 95001173

Plymouth County

Town Brook Historic and Archeological District, Address Restricted, Plymouth, 95001176

Worcester County

Allen, Ethan, House and Gun Shop, 37 Waterville St., Grafton, 95001167

MISSOURI

Johnson County

Cress, Herbert A. and Bettie E., House, 222 W. Gay St., Warrensburg, 95001174

MONTANA

Missoula County

Stark School, Ninemile Rd., Ninemile Valley, Huson vicinity, 95001165

VIRGINIA

Amherst County

Norfolk Southern Six Mile Bridge No. 58, Over James R. W of jct. of VA 726 and Norfolk & Western RR tracks, Lynchburg vicinity, 95001175

Chesterfield County

Bridge at Falling Creek, US 1/301 at Falling Cr., Richmond (Independent City) vicinity, 95001171

Prince Edward County

Moton, Robert Russa, High School, Jct. of S. Main St. and Griffin Blvd., Farmville, 95001177

Rockbridge County

Glasgow Historic District, Bounded by Seventh, Tenth, Gordon and Powahtan Sts., Glasgow, 95001170

Warren County

Long Meadow, Co. Rd. 611 about 0.9 mi. S of jct. with Co. Rd. 612, Middletown, 95001169

Riverside, 1315 Old Winchester Pike, Front Royal, 95001172

[FR Doc. 95–23745 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–70–P

Notice of Realty Action

Summary: Revision of Park Boundary, Gateway National Recreation Area.

Location: Gateway National Recreation Area, Staten Island Unit, Richmond County, New York.

Whereas, on August 24, 1994, the National Park Service published in the Federal Register at Volume 59, No. 163, pages 43588 and 43589, a minor boundary adjustment for Gateway National Recreation Area that excluded approximately one third of Fort Wadsworth from the Recreation Area.

Whereas, the National Park Service at that time concluded that the construction of approximately 1 million square feet of contemporary building space had changed the nature and use of the area significantly, since the boundaries were drawn by Public Law 92–592, making parts of Fort Wadsworth no longer currently suitable for park purposes.

Whereas, at that time, the Department of the Navy planned to declare the entirety of Naval Station New York to be surplus to the needs of the Department of Defense and transfer the same to the National Park Service under Public Law 92–592.

Whereas, the Department of the Navy has now determined that certain portions of Fort Wadsworth are not surplus to the needs of the Department of Defense and will be transferred to the Department of the Army and the United States Coast Guard.

Whereas, the remaining property will be transferred to the National Park Service and is consistent with park purposes.

Whereas, it has been determined that it is in the best interests of the National Park Service at this time to establish the boundaries of Gateway National Recreation Area consistent with the statutory boundaries of Public Law 92–592.

Whereas, Public Law 92–592, dated October 27, 1972, established the Gateway National Recreation Area,

Whereas, Section 1(b) of said Act authorizes minor boundary revisions of the recreation area,

Whereas, the Committee on Energy and Natural Resources, United States Senate and the Committee on Resources, United States House of Representatives were advised by letters of September 1995, that the Secretary intended to

make a minor revision to the boundary of Gateway National Recreation Area.

Therefore, pursuant to Section 1(b) of Public Law 92–592, notice is given that the boundary of Gateway National Recreation Area has been revised to include the land identified and described on the map entitled: ''Boundary Map, Gateway National Recreation Area,'' numbered 951:40,017B, dated July 1995, prepared by the Land Resources Division, Northeast Field Area, National Park Service.

The map is on file and available for inspection in the office of the National Park Service, Northeast Field Area, Land Resources Division, U. S. Custom House, 200 Chestnut Street, Philadelphia, Pennsylvania 19106.

Dated: September 20, 1995.

Joan A. Krall,

Acting Field Director, Northeast Field Area.

[FR Doc. 95–23874 Filed 9–25–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 5) (95–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a fourth quarter 1995 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter RCAF (Unadjusted) is 1.079. The fourth quarter RCAF (Adjusted) is 0.803, a decrease of 1.6% from the third quarter 1995 RCAF (Adjusted). Maximum fourth quarter 1995 RCAF rate levels may not exceed 98.4% of maximum third quarter 1995 rate levels.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 927–6239 or H. Jeff Warren, (202) 927–6243. TDD for the hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: September 15, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23814 Filed 9–25–95; 8:45 am]

BILLING CODE 7035–01–P

[Ex Parte No. 388 (Sub-No. 18)]

Intrastate Rail Rate Authority; Montana

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Montana to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will be effective on October 26, 1995, and will expire on October 25, 2000.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green, (202) 927–5269 or Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721].

Decided: September 12, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23816 Filed 9–25–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32645]

Big Stone-Grant Industrial Development and Transportation, L.L.C.—Construction Exemption—Ortonville, MN and Big Stone City, SD

AGENCY: Interstate Commerce Commission.

ACTION: Notice of conditional exemption.

SUMMARY: Under 49 U.S.C. 10505, the Interstate Commerce Commission conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction by Big Stone-Grant Industrial Development and Transportation, L.L.C. of approximately 2 miles of track in the vicinity of Ortonville, MN, and Big Stone City, SD. The conditional grant of the exemption is subject to our further consideration of the anticipated environmental impacts of the proposal.

DATES: The exemption will not become effective until the environmental process is completed. At that time, the Commission will issue a further decision addressing the environmental matters and establishing an exemption effective date, if appropriate. Petitions to reopen must be filed by October 16, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32645 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Thomas W. Wilcox, 1100 New York Ave., N.W., Suite 750, Washington, D.C. 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: September 11, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23815 Filed 9–25–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32773]

The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights Exemption—Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, The Denver and Rio Grande Western Railroad Company, and SPCSL Corp.

Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, The Denver and Rio Grande Western Railroad Company, and SPCSL Corp. (collectively, SP Lines) have agreed to grant The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) overhead trackage rights over SP Lines between MP 1296.0 at El Paso,

TX, and MP 245.4 at Hutchinson, KS, and between MP 245.4 at Hutchison, KS, and MP 89.0 at Topeka, KS, with (a) the right to serve all industries served by SP Lines within the Liberal and McPherson, KS, and Hooker and Guymon, OK, switching districts of SP Lines, (b) the right to connect with Santa Fe's line of railroad at Vaughn, NM, Stratford, TX, and Hutchinson, KS, (c) the right to connect with Burlington Northern Railroad's (BN) line of railroad at Dalhart, TX, and (d) the right to interchange with all carriers at El Paso, TX, and Hutchinson, KS.

These trackage rights have been granted pursuant to a settlement agreement dated April 13, 1995, which was entered into by SP Lines, on the one side, and by BN and Santa Fe, on the other side, in connection with the Finance Docket No. 32549 proceeding. *See Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company,* Finance Docket No. 32549 (ICC served Aug. 23, 1995) (*BN/Santa Fe*).

The settlement agreement provides that the various rights granted therein will be effective upon consummation of common control of BN and Santa Fe, which can occur no earlier than September 22, 1995. *See BN/Santa Fe,* slip op. at 117.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Michael A. Smith, 1700 E. Golf Road, Schaumburg, IL 60173–5860.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: September 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23817 Filed 9–25–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–362 (Sub-No. 2X)] [1]

Texas and Oklahoma R.R. Company—Abandonment Exemption—Between The Oklahoma-Texas State Line And Orient Junction (Sweetwater), TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the Texas and Oklahoma R.R. Company's abandonment of a 156.49-mile segment of the North Orient Rail Line extending from milepost 480.19 located at the Oklahoma-Texas State line to milepost 636.68 at Orient Junction, near Sweetwater, TX. This exemption is granted subject to historic, environmental, public use, trail use, and standard labor protection conditions.

DATES: The exemption will be effective on October 26, 1995, unless a formal expression of intent to file an offer of financial assistance is filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by October 6, 1995; petitions to stay must be filed by October 6, 1995; requests for public use conditions must be filed by October 16, 1995; and petitions to reopen must be filed by October 16, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–362 (Sub-No. 2X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Richard H. Streeter, Franklin Tower, Suite 500, 1401 Eye Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: September 18, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23901 Filed 9–25–95; 8:45 am]

BILLING CODE 7035–01–P

[1] This proceeding embraces *Texas and Oklahoma R.R. Co.—Abandonment Exemption—in Foard and Wilbarger Counties, TX,* Docket No. AB–362 (Sub-No. 3X) (59 FR 44157 (1994)). The effective date of that notice of exemption was stayed pending the disposition of this proceeding. The entire line segment that is the subject of Docket No. AB–362 (Sub-No. 3X) is included in the line that has been authorized for abandonment here. Therefore, the notice of exemption filed in AB–362 (Sub-No. 3X) has become moot and has been dismissed.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 64–CIV. 3121]

U.S. v. Gestetner Corporation

Take notice that Gestetner Corporation, defendant in this action, has filed a motion for an Order terminating the Final Judgment which was entered on September 9, 1968, in this antitrust action. The United States of America (''Government'') has consented to the entry of such an Order, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice.

The Complaint in this case was filed on October 14, 1964, and charged Gestetner with conspiring with independent Gestetner dealers to restrain trade in stencil duplicating machines, related machines and parts, and accessories and supplies for such machines in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. More specifically, the complaint alleged that Gestetner required each of its dealers to sell Gestetner products only in territories, and to customers, allocated to it; that Gestetner required each dealer to sell its products at prices and terms and conditions of sale fixed by the defendant; and that Gestetner prevented its dealers from competing for sales to the United States Government or to any other specific customers designated by Gestetner as ''National Accounts'', and from leasing Gestetner's machines without its permission. The complaint further alleged that Gestetner enforced these restrictions by cutting off the supply of products to, or reducing the sales territory of, any dealer who failed to be governed by the restrictions.

The Final Judgment prohibited Gestetner from imposing various vertical territorial or customer restraints on dealers that sell its stencil duplicating machines, electronic scanning machines, and any related machines and parts, and accessories and

supplies, and from adopting policies to enforce such restraints. The Final Judgment also enjoined Gestetner from disseminating material that suggests or recommends the prices at which Gestetner products shall be resold, unless that material also makes clear that the products may be resold at any price.

The Government has filed with the Court a Memorandum setting forth the reasons why it believes that termination of the Final Judgment would serve the public interest. Copies of the Complaint, Final Judgment, Stipulation containing the Government's consent, the Government's Memorandum, the motion papers, and all further papers filed with the Court in connection with this motion will be available for inspection at Room 200, Antitrust Division, Department of Justice, 325 7th Street, N.W., Washington, D.C. 20530 (Telephone 202–514–2481). Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit to the Government comments regarding the proposed termination of the Final Judgment. Such comments must be received within the sixty-day (60) period established by Court order, and will be filed with the Court by the Government. Comments should be addressed to Craig W. Conrath, Esq., Chief, Merger Task Force, Antitrust Division, Department of Justice, 1401 H Street NW., Suite 4816, Washington, D.C. 20530 (Telephone 202–307–5799).

Constance K. Robinson,

Director of Operations.

[FR Doc. 95–23872 Filed 9–25–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Department policy, 28 C.F.R. § 50.7, notice is hereby given that on September 18, 1995, a proposed Consent Decree in *United States* v. *Nozik, et al.*, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Water Act and the Rivers and Harbors Act. The Consent Decree requires payment of a civil penalty of $125,000, restoration and monitoring of filled wetlands, $300,000 to be spent in maintenance of marina bulkheads, and execution of a Conservation Easement for approximately 80 acres of adjacent real property, to be held and administered by the State of Ohio Department of Natural Resources.

The Department of Justice will receive written comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Attention: Robin L. Juni, 10th Street & Pennsylvania Avenue, N.W., Room 7215—Main Building, Washington, D.C. 20530 and should refer to *United States* v. *Nozik, et al.*, D.J. Ref. No. 90–5–1–6–513.

The proposed Consent Decree may be examined at any of the following offices: (1) the United States Attorney for the Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue East, Cleveland, Ohio 44114–2600 (contact Assistant United States Attorney Arthur I. Harris); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel James J. Cha); and (3) the Environmental Defense Section, Environment & Natural Resources Division, U.S. Department of Justice, Room 7110, 10th Street & Pennsylvania Avenue NW., Washington, D.C. 20530 (contact Trial Attorney Robin L. Juni or Brud R. Rossmann). In addition, the Consent Decree may be examined at the Clerk of the Court, United States District Court for the Northern District of Ohio, 102 United States Courthouse, 201 Superior Avenue East, Cleveland, OH 44114. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Consent Decree Library, 1120 G Street NW., Washington, D.C. 20005, telephone (202) 624–0892. For a copy of the Consent Decree please enclose a check in the amount of $5.50 (decree alone) or $13.25 (with exhibits) (25 cents per page reproduction charge) payable to Consent Decree Library.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environmental & Natural Resources Division.

[FR Doc. 95–23851 Filed 9–25–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Jewelry Design Center*, Civil No. 94–4253–AAH (C.C. Cal.), was lodged on September 12, 1995 with the United States District Court for the Central District of California. In the complaint in that action, the United States seeks from defendant Jewelry Design Center (''JDC'') civil penalties and injunctive relief under Section 309) of the Clean Water Act (the ''Act''), 42 U.S.C. 1319, for JDC's failure to comply with federal and local pretreatment standards promulgated under the Act. JDC violated the pretreatment standards governing metal finishers.

The proposed consent decree requires JDC to pay a civil penalty of $176,000, which will be split with co-plaintiff, the city of Los Angeles. JDC has installed the necessary equipment to treat its wastewater discharges.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, PO Box 7611, Washington, DC 20044; and refer to *United States* v. *Jewelry Design Center*, DOJ Ref. #90–5–1–1–5075.

The proposed consent decree may be examined at the office of the United States Attorney, Central District of California, Room 7516 Federal Building, 300 N. Los Angeles St., Los Angeles, CA 90012; at the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–23852 Filed 9–25–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 12, 1995, a proposed Settlement Agreement in *United States* v. *Yaworski, Inc.*, Civil Nos. N–89–615 (JAC), H–89–870 (JAC),

was lodged with the United States District Court for the District of Connecticut. The proposed Settlement Agreement resolves the governments' claims against five *de minimis* generators alleged to have disposed of hazardous substances at the Yaworski Lagoon Site located in Windham County, Connecticut for their failure to comply with a Consent Decree entered in 1990. The original action was brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended.

Under the terms of the Settlement Agreement, Triangle Wire & Cable, Inc., Kaman Aerospace Corp., Rogers Corp., C&M Corp. and Ross & Roberts, Inc. will reimburse the United States $310,903 for costs to be incurred in the future at the Site to complete the response actions there. The settlement payment is based on the settlers' volumetric share of estimated future response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Yaworski*, D.J. Ref. 90–11–2–307A.

The proposed Settlement Agreement may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts. Copies of the Settlement Agreement may be examined at the Environmental Enforcement Section Document Center, 1120 G Street NW., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $14.00 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Bruce Gelber,

Acting Section Chief, Environment and Natural Resources Division.

[FR Doc. 95–23853 Filed 9–25–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–31,326]

Topographic Land Surveyors A/K/A Topographic Engineering Company Midland, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 16, 1995, applicable to all workers of Topographic Land Surveyors, Midland, Texas. The notice will soon be published in the Federal Register.

New information received from the company shows that some of the workers at the subject firm had their unemployment insurance (UI) taxes paid to Topographic Engineering Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA-W–31,326 is hereby issued as follows:

All workers of Topographic Land Surveyors, a/k/a Topographic Engineering Company, Midland, Texas who became totally or partially separated from employment on or after June 28, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of September 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–23785 Filed 9–25–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partial separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,331; Owens-Brockway Glass Container, Inc., Auburn, NY

TA–W–31,338; Owens-Brockway Glass Container, Inc., Atlanta, GA

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact data for all workers for such determination.

TA–W–31,335; Polytech Neting Industries, Scottsboro, AL: August 1, 1994

TA–W–31,237; Keystone Lighting/Div. of U.S. Industries, Hayden Lake, ID: June 29, 1994.

TA–W–31,261; Locke Insulators, Inc., Baltimore, MD: June 30, 1994.

TA–W–31,232; Leff & Wolf, A Div. of Carol Wren, Inc,. New York, NY: June 26, 1994.

TA–W–31,231; Allegheny Ludlum Corp., Bagdad Plant, Leechburg, PA: July 3, 1994.

TA–W–31,238; NER Data Products, Inc., Franklinville, NJ: June 9, 1994.

TA–W–31,264; Polk Audio, Inc., Baltimore, MD: July 10, 1994.

TA–W–31,342; Fine Contract, Inc., Hialeah, FL: August 9, 1994.

TA–W–31,240 & A; National Garment Co., Fayette, MO & Memphis, MO: July 3, 1994.

TA–W–31,262; Network Color Technology, St. Charles, MO: July 10, 1994.
TA–W–31,363; Samsons Manufacturing Corp., Wilson, NC: August 8, 1994.
TA–W–31,343; Hampso Apparel, Chase City, VA: August 1, 1994.
TA–W–31,292; McBriar Cap Co., Waycross, GA: July 17, 1994.
TA–W–31,229; Powerex, Inc., Youngwood, PA: January 19, 1995.
TA–W–31,314; Oregon National Gas Development Corp., Portland, OR: July 18, 1994.
TA–W–31,321; Basler Electric Co., Huntingdon, TN: July 31, 1994.
TA–W–31,366; Kendall Healthcare Products Co., Kendall Mid-West Div., Salt Lake City, UT: August 15, 1994.
TA–W–31,359; Pendleton Woolen Mills, Inc., Milwaukee, OR: August 9, 1994.
TA–W–31,414, TA–W–31,415, TA–W–31,416; Vaagen Brothers Lumber, Inc., Colville, WA, Ione, WA & Republic, WA: August 30, 1994.
TA–W–31,313; Horix Manufacturing Co., McKees Rock, PA: July 24, 1994.
TA–W–31,284 & A: Key Plastics, Inc., Mt. Olivet, Felton, PA and Cherry Street, Felton, PA: July 12, 1994.
TA–W–31,332; Electronic & Space Corp (ESCO), St. Louis, MO: July 31, 1994.
TA–W–31,323; Koh-I-Noor, Inc., Bloomsbury, NJ: July 28, 1994.
TA–W–31,304; Curtis Industries, Inc., Eastlake, OH: July 25, 1994.
TA–W–31,361, TA–W–31,362; Rice Engineering Corp., Great Bend, KS & Choctaw, OK: August 9, 1994.
TA–W–31,315; Wirecraft Industries, Inc., Burcliff Div., Ft. Smith, AR: July 25, 1994.
TA–W–31,382; O.A.I. Electronics, Hartshorne, OK: August 15, 1994.
TA–W–31,219; Geneva Steel, Provo, UT: June 26, 1994.
TA–W–21,352; Don Shapiro Industries, El Paso, TX: August 9, 1994.
TA–W–31,194; Angelica Uniform Group, Marquand, MO, GA: June 20, 1994.
TA–W–31,263 & A; Cowlitz Stud Co., Randle, WA & Morton, WA: July 12, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of August and September, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

NEGATIVE DETERMINATIONS NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00550; Jakel, Inc., Ramer, TN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–00552; Zenith Electronics Corp., El Paso, TX

The investigation revealed that criteria (1) and (4) were not met. A significant number or proportion of the workers have not become totally or partially separated from employment. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

AFFIRMATIVE DETERMINATIONS NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00568; Kendall Healthcare Products Co., Kendall Med-West Div., Salt Lake City, UT: August 15, 1994.
NAFTA–TAA–00542; Oregon Natural Gas Development Corp., Portland, OR: July 18, 1994.
NAFTA–TAA–00578; Basler Electric Co., Huntingdon, TN: July 31, 1994.
NAFTA–TAA–00583; Copper Range Co., White Pine, NY: August 30, 1994.
NAFTA–TAA–00551; Equitable Resources Energy Co., Balcron Oil Div., Billings, MT: August 2, 1994.
NAFTA–TAA–00553; Miller Brewing Co., Fulton Brewing Div., Fulton, NY: August 3, 1994.
NAFTA–TAA–00559; American White Cross, Inc., Dayville, CT: August 3, 1994.

I hereby certify that the aforementioned determinations were issued during the months of August and September, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 18, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–23784 Filed 9–25–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,283]

Chadco, Incorporated, Corinth, Mississippi; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 24, 1995 in response to a worker petition which was filed on behalf of workers and former workers at Chadco, Incorporated, located in Corinth, Mississippi (TA–W–31,283).

The company has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 15th day of September 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–23786 Filed 9–25–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,485]

Lockheed Fort Worth Company a Division of Lockheed Corporation, Fort Worth, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Revised Determination on Reopening on May 17, 1995, applicable to all workers of Department 73 of the subject firm. The notice was published in the Federal Register June 2, 1995 (60 FR 28800).

New information furnished to the Department shows that workers at the subject firm producing wiring harnesses on other production lines at Lockheed Fort Worth Company have been separated from employment.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover all workers producing wire harnesses at Lockheed Fort Worth Company located in Fort Worth, Texas.

The amended notice application to TA–W–30,485 is hereby issued as follows:

All workers of Lockheed Fort Worth Company, A Division of Lockheed Corporation, Fort Worth, Texas engaged in the production of wire harnesses who became totally or partially separated from employment on or after October 31, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of September 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–23787 Filed 9–25–95; 8:45 am]

BILLING CODE 4510–30–M

Federal Committee on Apprenticeship; Notice of Cancellation of Public Meeting

This document cancels the October 1, 1995 open meeting of the Federal Committee on Apprenticeship. Notice of this open meeting was previously published in the Federal Register on September 19, 1995, 60FR, 48528. The meeting is being canceled due to Federal budget difficulties.

FOR FURTHER INFORMATION CONTACT: Ms. Marion M. Winters, Designated Federal Staff, Staff Designee, Federal Committee on Apprenticeship, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–4649, Washington, D.C. 20210, Telephone (202) 219–5921, X–114.

Signed at Washington, D.C. this 20th day of September 1995.

Anthony Swoope,

Designated Federal Official, Director, Bureau of Apprenticeship and Training.

[FR Doc. 95–23783 Filed 9–25–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL CREDIT UNION ADMINISTRATION

Mergers; Hearings, etc.; Montana Educators' Federal Credit Union

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of public hearing.

SUMMARY: The NCUA Board is holding a public hearing on the appeal of NCUA's Region VI denial of a charter application for Proposed Montana Educators' Federal Credit Union.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–2428, 703–518–6304. Submit written statements either by mail at this address or by FAX at 703–518–6319.

SUPPLEMENTARY INFORMATION: An application for a charter for proposed Montana Educators' Federal Credit Union was denied by NCUA's Region VI office in June of this year. The charter was denied on several grounds including inadequate documentation from groups within the proposed field of membership; inadequate request for affiliation letters; an unreliable survey and overlap problems. Representatives of the proposed credit union have appealed the charter denial. The NCUA will decide the appeal pursuant to chartering policy (Interpretive Ruling and Policy Statement 94–1). The Board has decided to grant a hearing on this appeal. Only the credit union applicant and representatives of the Region VI Office will be given the opportunity to make statements. The hearing will be open to the public, and the public may submit written comments.

Public Hearing

Date: September 29, 1995.
Time: 11:30 A.M.
Place: Filene Board Room, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.
Public participation: The hearing is open to the public. Oral presentations will be made only by representatives of the charter applicant and NCUA's Region VI Office. Written comments from the public may be submitted to the Board Secretary through the close of business October 6, 1995.

Dated: September 21, 1995.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–23800 Filed 9–25–95; 8:45 am]

BILLING CODE 7535–01–M

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 19 October 1995 at 10:00 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, September 19, 1995.

Charles H. Atherton,

Secretary.

[FR Doc. 95–23876 Filed 9–25–95; 8:45 am]

BILLING CODE 6330–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corporation, R.E. Ginna Nuclear Power Plant; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–18, issued to Rochester Gas and Electric Corporation (the licensee), for operation of the R. E. Ginna Nuclear Power Plant, located at the licensee's site in Wayne County, New York.

The proposed amendment would represent a full conversion from the current Technical Specifications (TSs) to a set of TS based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 0, dated September 1993, together with approved travellers used in the issuance of

Revision 1, dated April 1995. NUREG–1431 was developed through working groups composed of NRC staff members and industry representatives and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the TSs. As part of this submittal, the licensee has applied the criteria contained in the Commission's Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors of July 22, 1993, to the current Ginna TSs, and, using NUREG–1431 as a basis, developed a proposed set of improved TSs for Ginna.

The licensee has categorized the proposed changes to the current TSs into ten general groupings. These groupings can be characterized as administrative changes, relocated changes, more restrictive changes, and less restrictive changes.

Non-technical administrative changes were intended to incorporate human-factors principles into the form and structure of the improved plant TSs so that they would be easier to use for plant operations personnel. Administrative changes are editorial in nature or involve the reorganization or reformatting of requirements without affecting technical content or operational requirements. The proposed changes include: (a) Providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information which must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices.

Relocated changes, those current TS requirements which do not satisfy or fall within any of the four criteria specified in the Commission's policy statement, may be relocated to appropriate licensee-controlled documents. In the licensee's application, Attachment A as part of their May 26, 1995 letter, the licensee states that such requirements are generally relocated to the Updated Final Safety Analysis Report (UFSAR) and TS Bases. The relocated limiting conditions for operation (LCO) portion of the current TS, which includes the system description, design limits, functional capabilities, and performance levels, will be relocated to the UFSAR. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms. These changes reduce the number of current TS requirements but the actual commitment to continue to perform the requirement will be unchanged upon implementation of improved TSs.

The licensee's proposed improved TSs include certain more restrictive requirements that are contained in the current TSs, which are either more conservative than corresponding requirements in the current TSs, or are additional restrictions which are contained in NUREG–1431 but are not contained in the current TSs. Examples of more restrictive requirements include: placing an LCO on plant equipment which is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive SRs.

Less restrictive changes are those where current requirements are relaxed or eliminated, or new flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the improved STSs. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design was reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431 and thus provides a basis for these revised TS.

These administrative, relocated, more restrictive and less restrictive changes to the requirements of the current TSs do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the changes described above, the licensee proposed certain changes to the current TSs that are both less restrictive and are not within the scope of application for conversion to the guidance of NUREG–1431. All of the differences will be reviewed by the NRC staff and a determination will be made regarding the approval or disapproval of each item as a part of this licensing action. Specifically, the licensee identified the following instances where their submittal varied from the provisions of NUREG–1431.

(1) All refueling interval surveillance were changed from 18 months to 24 months consistent with the guidance of Generic Letter 91–04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle, dated April 2, 1991.''

(2) Allow both post-accident charcoal filters to be removed from service at the same time, provided both containment spray trains are operable (proposed Limiting Condition for Operation (LCO) 3.6.6).

(3) Require only one component cooling water (CCW) heat exchanger to be operable when the system is required to be operable (proposed LCO 3.7.7).

(4) Allow both motor driven auxiliary feedwater (AFW) pumps to be removed from service for up to 72 hours (proposed LCO 3.7.5).

(5) Increase the allowed outage times for certain reactor trip system and engineered safety feature actuation system functions up to 72 hours (proposed LCO 3.3.1 and 3.3.2).

(6) Allow an additional 48 hours to restore an inoperable reactor trip breaker or automatic trip logic train in reactor operating modes 3, 4, and 5 (Hot Standby, Hot Shutdown, Cold Shutdown) after exiting mode 2 (Startup) with this condition (proposed LCO 3.3.1).

(7) Allow the use of a closed system to isolate a containment penetration with a failed containment isolation valve (proposed LCO 3.6.3).

(8) Require only one offsite power source to be operable during reactor operating mode changes (proposed LCO 3.8.1).

(9) Allow 72 hours to reduce the power range neutron flux trip function setpoint when the heat flux hot channel factor (Fq) or nuclear enthalpy rise hot channel factor (F delta h) is not within limits (proposed LCO 3.2.1 and 3.2.2).

(10) Remove the requirement to test certain reactor coolant system pressure isolation valves when the plant has been in reactor operating mode 5 (cold shutdown) for greater than 7 days (proposed surveillance requirement (SR) 3.4.14.1).

(11) Remove the requirement to test the motor driven AFW pump cross-over motor operated isolation valves (proposed LCO 3.7.5).

(12) Remove the requirement to verify that the AFW pumps and valves can actuate within 10 minutes (proposed 3.7.5).

(13) Increase the allowed tolerances for the pressurizer safety valves setpoint (proposed LCO 3.4.10).

(14) Increase the allowed fuel enrichment limit from 4.25 weight percent to 5.05 weight percent (proposed Specification 4.3.1.1.a).

(15) Relocate the following parameters and setpoints to the core operating limits report (COLR):

Overpower delta temperature and overtemperature delta temperature (proposed LCO 3.3.1).

Refueling water storage tank boron concentration (proposed LCO 3.5.4).

Accumulator boron concentration (proposed LCO 3.5.1). Shutdown margin (proposed LCO 3.1.1).

(16) Relocate the containment integrity requirements during refueling reactor operating mode 6 (Refueling) from the TSs.

(17) Relocate the reactor coolant pump underfrequency trip function from the TSs.

(18) Relocate the AFW and standby AFW system manual initiation functions from the TSs.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 26, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, NY 14610. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Ledyard B. Marsh, Director, Project Directorate I–1: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Winston & Strawn, 1400 L St. NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 26, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, NY 14610.

Dated at Rockville, Maryland, this 13th day of September.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23804 Filed 9–25–95; 8:45 am]

BILLING CODE 7590–01–P

[IA 95–037]

Dr. Hung Yu; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Dr. Hung Yu was employed by the Department of the Army at its Madigan Army Medical Center, Fort Lewis (Tacoma, Washington). Madigan Army Medical Center (Licensee) holds License No. 46–02645–03 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35 on May 12, 1960. The license authorizes possession and use of byproduct material in accordance with the conditions specified therein.

Dr. Yu was employed by the Licensee from approximately October 1993 to August 2, 1995, as a medical physicist. During his employment with the Licensee, Dr. Yu reported to the Chief, Radiation Therapy Service, and was responsible for supervising a radiation dosimetrist. Among other tasks, Dr. Yu was responsible for all dosimetry, including developing treatment plans, evaluating the adequacy and accuracy of the treatment plan for each brachytherapy treatment, and modifying treatment plans as required by authorized users. Dr. Yu was also responsible for performing the duties of a radiation therapy dosimetrist, as needed, and directing all physics aspects of intracavitary and interstitial implants. The latter responsibilities included ordering and accepting or receiving brachytherapy sources, source preparation and related quality assurance tasks, and computer calculations, including providing calibration and decay factors for brachytherapy sources. In his role as a medical physicist who supervised a dosimetrist, Dr. Yu was additionally responsible for ensuring that the dosimetrist's activities were also in compliance with NRC regulations and the Licensee's procedures and Quality Management Program.

II

On June 2, 1995, the Licensee notified the NRC of a misadministration which occurred on May 10, 1995, but had gone unrecognized by the Licensee until June 2, 1995. This finding prompted a review by the Licensee which identified additional misadministrations. On June 8, 1995, the Licensee reported three misadministrations which occurred on February 9 and August 23, 1994, and January 11, 1995. On June 12, 1995, an additional misadministration was reported to have occurred on February 3, 1995. The misadministrations all involved brachytherapy implants using iridium-192 sealed sources, and each treatment was performed in accordance with a treatment plan developed by Dr. Yu or under his direction.

The NRC began an inspection of the events on June 6, 1995. An investigation by the NRC's Office of Investigations (OI) was initiated on June 13, 1995. Both the NRC inspection and NRC investigation are ongoing. The Licensee initiated an internal investigation of the misadministrations and related issues on June 2, 1995, and provided the NRC with a written report of its investigation on August 22, 1995. The NRC inspection and investigation demonstrate that the cause of the misadministrations was an input error of one parameter used by the computerized treatment planning system to calculate dose rates for treatment plans. Specifically, Dr. Yu had instructed the dosimetrist to use a value, for a ''calibration factor'' used by the system to calculate dose rates, which was not calculated according to the computer system manufacturer's instructions.

NRC's interviews of Dr. Yu and other Licensee personnel establish that on June 2, 1995, Dr. Yu engaged in deliberate misconduct in violation of 10 CFR § 30.10(a)(2) by deliberately providing inaccurate information to the Licensee on a matter material to the NRC, specifically the dose calculation error that caused the May 10, 1995 misadministration. In response to repeated questions on June 2, 1995, by the Radiation Safety Officer (RSO), and in the presence of the authorized user (also the Chief, Radiation Therapy Service), regarding the cause of the May 10, 1995 misadministration, Dr. Yu stated that it was a ''computer error,'' that ''it was hardware error,'' and that it was a ''software error.'' Dr. Yu's statements to the Licensee were deliberately inaccurate because on May 16, 1995, Dr. Yu was made aware by the computer system manufacturer that his data entry error (i.e., input error) to the treatment planning system was the cause for the dose calculation errors and, immediately after being informed of his error, Dr. Yu began to correctly enter the calibration factor. Only after the RSO stated that he had discussed the treatment plan calculations with the dosimetrist did Dr. Yu explain that the cause of the misadministration was his use of an erroneous input parameter. Dr. Yu's provision of inaccurate information to the RSO and Chief, Radiation Therapy Service, regarding the cause of the dose calculation error associated with the May 10, 1995 misadministration interfered with the Licensee's investigation required by 10 CFR 35.21(b)(1) of potential misadministrations.

Furthermore, in violation of 10 CFR 30.10(a)(1), Dr. Yu engaged in deliberate misconduct which caused the Licensee to be in violation of NRC requirements including: (1) 10 CFR 20.1906(b), which requires, in part, that upon receipt of labelled packages containing brachytherapy sources, the packages be tested for contamination; (2) 10 CFR 20.2103(a), which requires, in part, that each licensee maintain records showing the results of surveys required by 10 CFR 20.1906(b); and (3) 10 CFR 30.9 which requires, in part, that information required to be maintained by the Commission's regulations shall be complete and accurate in all material respects. For example, Dr. Yu, when questioned about the package survey results of August 19, 1994, admitted to an NRC inspector and OI investigator that he had failed to perform NRC-required package receipt surveys for radioactive contamination and that he had deliberately completed Licensee records to falsely reflect that the contamination surveys had been performed. Dr. Yu stated that, although he was aware of the NRC requirement to perform the survey, he did not believe that the survey was important, that it was just a requirement and a formality and, therefore, he just recorded that the survey had been conducted.

III

Although the NRC investigation is continuing, based on the information developed to date, the NRC concludes that Dr. Yu engaged in deliberate misconduct: (1) In violation of 10 CFR 30.10(a)(2), by knowingly providing to the Licensee on June 2, 1995, inaccurate information relating to a matter material to the NRC, specifically the cause of the error that resulted in the misadministration; and (2) in violation of 10 CFR 30.10(a)(1), which caused the Licensee to be in violation of NRC requirements, including 10 CFR 20.1906(b), 10 CFR 20.2103(a), and 10 CFR 30.9(a), by deliberately failing to conduct surveys of labelled packages containing brachytherapy sources and deliberately making entries to Licensee records to show that he had conducted such surveys.

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Dr. Yu's actions in causing the Licensee to violate NRC requirements and his misrepresentations to the Licensee have

raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees. Further, Dr. Yu has demonstrated an unwillingness to comply with NRC requirements necessary for the protection of the health and safety of personnel and patients affected by the areas of his responsibility. Dr. Yu's deliberate false statements to Licensee officials concerning radiological exposure to patients and his deliberate violation of NRC requirements is not acceptable conduct for a person engaged in NRC-licensed activities.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Dr. Yu were permitted at this time to be involved in any NRC-licensed activities.

Therefore, the public health, safety and interest require, pending completion of the investigation and further action by the NRC, that Dr. Yu be prohibited from involvement in licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

Pending further investigation and order by the NRC, Hung Yu, Ph.D. is prohibited from participation in any respect in NRC-licensed activities. For the purposes of this paragraph, NRC-licensed activities include licensed activities of: (1) An NRC licensee, (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20, and (3) an Agreement State licensee involved in distribution of products that are subject to NRC jurisdiction.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Dr. Yu of good cause.

V

In accordance with 10 CFR 2.202, Hung Yu, Ph.D. must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Hung Yu, Ph.D. or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, Suite 400, 611 Ryan Plaza, Arlington, Texas 76011, and to Hung Yu, Ph.D., if the answer or hearing request is by a person other than Hung Yu, Ph.D. If a person other than Hung Yu, Ph.D. requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Hung Yu, Ph.D. or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Hung Yu, Ph.D., or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 18th day of September 1995.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 95–23805 Filed 9–25–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–272 and 50–323]

Pacific Gas and Electric Company; Diablo Canyon Nuclear Power Plant, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR–80 and DPR–82, issued to Pacific Gas and Electric Company (the licensee), for operation of the Diablo Canyon Nuclear Power Plant (DCPP) located in San Luis Obispo County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow implementation of a hand geometry biometric system of site access control such that photograph identification badges can be taken offsite.

The proposed action is in accordance with the licensee's application dated May 5, 1995, and supplemental letters dated July 28, 1995, September 14, 1995 and September 19, 1995, for exemption from certain requirements of 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power plant reactors against radiological sabotage.''

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

Paragraph (1) of 10 CFR 73.55(d), ''Access Requirements,'' specifies that ''licensee shall control all points of personnel and vehicle access into a protected area.* * *'' It is specified in 10 CFR 73.55(d)(5) that ''A numbered picture badge identification system shall

be used for all individuals who are authorized access to protected areas without escort.'' It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *.''

Currently, unescorted access into protected areas of the DCPP is controlled through the use of a photograph on a combination badge and keycard. (Hereafter, these are referred to as badges). The security officers at the entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at the entrance/exit location and are returned upon exit. The badges are stored and are retrievable at the entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plant's physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at the entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from certain requirements of 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

The Commission has completed its evaluation of the proposed action. Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badges with them when they depart the site.

Based on a Sandia report entitled ''A Performance Evaluation of Biometric Identification Devices'' (SAND91—0276 UC—906 Unlimited Release, printed June 1991), and on its experience with the current photo-identification system, the licensee stated that the false acceptance rate of the proposed hand geometry system is comparable to that of the current system. The licensee stated that the use of the badges with the hand geometry system would increase the overall level of access control. Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan for DCPP will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The access process will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area.

Environmental Impacts of the Proposed Action

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released off site, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not change any current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement related to the Nuclear Generating Station Diablo Canyon Units 1 and 2'', dated May 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on August 23, 1995, the staff consulted with the California State official, Mr. Steve Hsu of the Department of Health Services, regarding the environmental impact statement for the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 5, 1995, and supplements dated July 28, 1995, September 14, 1995 and September 19, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 20th day of September 1995.

For the Nuclear Regulatory Commission.

James C. Stone,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23927 Filed 9–25–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy; Policy Letter on Subcontracting Plans for Companies Supplying Commercial Items

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: OFPP is issuing a Policy Letter on ''subcontracting Plans for Companies Supplying Commercial Items.''

SUMMARY: Section 8(d) of the Small Business Act (15 U.S.C. 637(d) requires that each contract that exceeds $500,000 ($1 million in the case of construction), and that offers subcontracting opportunities, include a requirement that the apparent successful offeror negotiate a subcontracting plan which shall become a material part of the contract. These requirements have been implemented by prior OFPP Policy Letters and subsequent promulgation in the Federal Acquisition Regulation (FAR).

Sections 8104 and 8203 of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103–355, establish a preference for the acquisition of commercial items. In establishing this preference, Congress expressed concern that implementing policies ease the burden of government-unique requirements for companies supplying commercial items. In response to this concern, the policy on subcontracting plans is being revised to reduce the burden of government-unique requirements on contractors that supply commercial items.

This Policy Letter focuses on contracts and subcontracts for ''commercial items'' as defined in section 8001 of FASA. Annual commercial subcontracting plans that relate to a company's commercial and noncommercial production are authorized for:

(a) prime contracts for commercial items, or

(b) subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

In addition, the Policy Letter states that commercial plans, when authorized under the Policy Letter, shall be the preferred method of compliance with the requirements of section 8(d) of the Small Business Act. The policy letter reinforces that these provisions for subcontracting plans for commercial item contractors do not in any way relieve contracting officers, prime contractors or subcontractors of their responsibilities for assuring that small, small disadvantaged, and women-owned small businesses have the maximum practicable opportunity to participate in contracts awarded by Federal agencies.

SUPPLEMENTARY INFORMATION: A proposed Policy Letter and request for comments was published in the February 7, 1995 Federal Register (60 FR 7229). Forty-three comment letters were received in response to the Federal Register notice, of which, 28 were from the private sector. A summary of the more significant comments received and OFPP responses to them follows:

1. Standard From 294

Many personnel from the private sector commented that this Policy Letter would eliminate the Standard Form 294, a report that they considered integral as an indication of a government contractor's compliance with federal mandated small business and small disadvantaged business subcontracting goals on a contract by contract basis. While there will be some reduction in the submission of Standard Form 294 as a result of this revised policy, it should be noted that there has been a policy in place since 1980 that allows prime contractors supplying commercial items to use commercial plans which eliminates the requirement to submit the Standard Form 294. This policy was introduced in OFPP Policy Letter 80–2, dated April 29, 1980. For the past fifteen years, prime contractors supplying commercial items have not been required to submit the Standard Form 294. The information has been reported in summary through the Standard Form 295 (Summary Subcontract Report). The new policy letter is drafted to reemphasize the FASA's preference for the acquisition of commercial items. The Conference Report (H.R. 103–712) recognized the specific authority already provided in policy and subsequent regulation for commercial (e.g., corporation, company, division, plant, or product line) rather than contract-by-contract subcontracting plans for subcontractors providing commercial items. The report also noted that traditional business practices by commercial manufacturers does not lend itself to unique government related orders. Under OFPP policy, all other contract awards not involving commercial items will require submission of subcontracting plans on a contract-by-contract basis and the submission of the Standard Form 294.

2. Liquidated Damages

Many personnel from the private sector commented that the Policy Letter eliminates the liquidated damages penalty for government contractors that refuse to comply with subcontracting goals. OFPP has not eliminated the liquidated damages penalty; that language is contained in the FAR and various OFPP Policy Letters. Additional guidance on liquidated damages and the assessment of liquidated damages is contained in the draft Policy Letter on Subcontracting Plans that is being published concurrently with this Policy Letter.

3. Enforcement and Administration of Subcontracting Plans

Some personnel from both the government and private sector stated that more guidance is needed on enforcement and administration of subcontracting plans. We agree that the government needs to more strongly administer and monitor subcontracting plans. In order to emphasize that policy, we are publishing a draft Policy Letter on Subcontracting Plans concurrently with this Policy Letter. The draft Policy Letter on Subcontracting Plans especially focuses on the contracting officer's responsibility to monitor the plan and list methods that the contracting officer can use in considering whether a good faith effort has been made.

4. Inconsistencies With Past Policy Letters

A few commentors stated that the Policy Letter is inconsistent with past Policy Letters. We are adding language to this Policy Letter that states that it supersedes any provision inconsistent with prior policy letters. We are also publishing a draft Policy Letter on Subcontracting Plans concurrently with this Policy Letter that, when issued in final, will supersede and cancel OFPP Policy Letter 80–1, ''Public Law 95–507, Section 211, Subcontracting: Agency Coordination with the Small Business Administration Resident Procurement Center Representatives,'' dated January 24, 1980; OFPP Policy Letter 80–2, ''Regulatory Guidance on Section 211 of Public Law 95–507,'' dated April 29, 1980; Supplement No. 1 to Policy Letter 80–2, dated May 29, 1981; and OFPP Policy Letter 80–4, ''Women's Business Enterprise Program,'' dated April 29, 1980.

5. Classification of Commercial Items

Several commentors requested that OFPP develop a comprehensive list of commercial items with appropriate product and service codes in order to

avoid confusion regarding what purchases qualify for the designation of commercial items. OFPP feels that the definition of commercial items in FASA and the corresponding implementing regulations provides sufficient information on what constitutes a commercial item. The development of a comprehensive list to be used by agencies would be time consuming, inflexible, require constant updating, and impose micro-management.

DATES: The Policy Letter is effective 30 days from the date of issuance. It directs that governmentwide regulations be promulgated to implement the policies contained therein within 210 days from the date this Policy Letter is published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: William Coleman, Deputy Administrator, 202–395–3503 or Linda Mesaros, Deputy Associate Administrator, 202–395–4821. The address is Office of Federal Procurement Policy, 725 17th Street, NW, New Executive Office Building, Room 9001, Washington, DC 20503. To obtain a copy of this Policy Letter, please call the Executive Office of the President's Publication Office at 202–395–7332.

Steven Kelman,

Administrator.

Policy Letter 95–1

To the Heads of Executive Departments and Establishments

Subject: Subcontracting Plans for Companies Supplying Commercial Items

1. *Purpose.* The purpose of this Policy Letter is to establish policies on the requirement for subcontracting plans for companies supplying commercial items.

2. *Authority*. This Policy Letter is issued pursuant to section 6 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405.

3. *Definition*. Commercial plan means a subcontracting plan covering the offeror's fiscal year and which is applicable to the entire production of commercial items sold by either the entire company or portion thereof (e.g., corporation, company, division, plant, or product line). As used in this Policy Letter, the term ''commercial item'' is a product of service that satisfies the definition of commercial item in section 8001 of FASA (41 U.S.C. 403).

4. *Background*. Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) requires that each contract that exceeds $500,000 ($1 million in the case of construction), and that offers subcontracting opportunities, include a requirement that the apparently successful offeror negotiate a subcontracting plan which shall become a material part of the contract. The requirement for subcontracting plans does not apply to small businesses. The above requirements have been implemented by OFPP Policy Letter 80–2 ''Regulatory Guidance on Section 211 of Public Law 95–507'' dated April 29, 1980, and Supplement No. 1 dated May 29, 1981, and further implemented in Part 19 of the Federal Acquisition Regulation (FAR). OFPP Policy Letter 80–2 specifically authorized the use of an annual commercial subcontracting plan that relates to the contractor's commercial and noncommercial production when the government is acquiring a commercial item.

Sections 8104 and 8203 of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103–355, establish a preference for the acquisition of commercial items by the Department of Defense and civilian agencies. In establishing this preference, Congress expressed concern that implementing policies ease the burden of government-unique requirements for companies supplying commercial items. The Conference Report (H.R. 103–712) recognizes the unique circumstance faced by commercial contractors and the specific authority already provided in regulation and policy for commercial plans rather than contract-by-contract plans.

The report cites OFPP Policy Letter 80–2, FAR 52.219–9(g), and 519.704(b) of the General Services Administration Acquisition Regulation which provide express authority for commercial plans. The Report states:

''Because *contractors and subcontractors* offering commercial items tend to rely on their existing network of suppliers rather than entering new subcontracts to fill government orders, the requirements applicable to the company-wide subcontracting plans of commercial companies differ from the requirements applicable to individual subcontracting plans of non-commercial companies. See e.g. sections 519.704(c)(2), 519.705–5 and 519.705–6(b) of the GSA FAR Supplement. For example, a single company-wide plan authorized by these regulations is likely to address subcontracting opportunities at both the prime contract and subcontract levels, obviating the need for the filing of individual contract-by-contract or subcontract-by-subcontract plans. Title VIII of the bill is not intended to require any changes to such practices.'' (emphasis added)

In response to this concern, the policy on subcontracting plans is being revised to reduce the burden of government-unique requirements on prime contractors and subcontractors that supply commercial items.

5. *Policy*. The following policy applies governmentwide to contracts and subcontracts for ''commercial items'' as defined in section 8001 of FASA and implementing regulations:

(1) It is a fundamental policy of the Federal government that a fair proportion of its contracts be placed with small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women and that such businesses participate in subcontracting under government prime contracts.

(2) When the requirements for a subcontracting plan under section 8(d) of the Small Business Act apply, annual commercial subcontracting plans that relate to a company's commercial and noncommercial production are authorized for:

(a) prime contracts for commercial items, or

(b) subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(3) Furthermore, it is the policy of the United States Government that commercial plans, when authorized under this Policy Letter, shall be the preferred method of compliance with the requirements of section 8(d) of the Small Business Act. In all solicitations expected to offer subcontracting opportunities which trigger the requirements for a subcontracting plan, the Government shall inform prospective offerors of the opportunity for themselves and/or their subcontractors to develop commercial plans if they are supplying commercial items. This would apply whether or not the prime contractor is supplying a commercial item.

(4) This policy is in addition to the existing policies cited in Section 3 of this Policy Letter. This Policy Letter supersedes any provisions inconsistent with prior OFPP Policy Letters.

6. *Contracting Officer Responsibilities*. Contracting officers shall ensure that:

(1) These provisions for subcontracting plans for commercial item contractors do not in any way relieve contracting officers, prime contractors or subcontractors of their responsibilities for assuring that small, small disadvantaged and women-owned small businesses have the maximum practicable opportunity to participate in contracts awarded by Federal agencies.

(2) The use of a commercial subcontracting plan does not relieve a contractor of the requirement to make a good faith effort to comply with the requirements of the subcontracting plan.

(3) Contracting officers should impose liquidated damages as applicable when contractors fail to comply with subcontracting plans.

(4) When a contractor has a commercial plan previously approved by another agency's contracting activity or another Federal agency for the company's fiscal year, the contracting officer shall obtain a copy of the plan and the approval document from the contractor. These documents shall be incorporated into the contract.

(5) Since a commercial plan may be applicable to contracts awarded by more than one contracting activity or Federal agency, contracting officers must ensure that the commercial plan is not allowed to expire prior to the negotiation of a new commercial plan. This eventually may occur when the contract of the contracting officer monitoring the plan is completed and no new contract is awarded to that contractor during the contractor's fiscal year. To prevent such an occurrence, 30 days prior to contract completion, the contracting officer monitoring the commercial plan shall obtain from the contractor the name of the contracting officer administering the contract with the latest completion date and arrange for the transfer of the monitoring responsibilities to that contracting officer.

7. *Regulatory Responsibilities*. The Federal Acquisition Regulatory Council shall ensure that the policies established herein are

incorporated in the FAR within 210 days from the date this Policy Letter is published in the Federal Register. Promulgation of final regulations within that 210 day period shall be considered issuance in a ''timely manner'' as prescribed in 41 U.S.C. 405(b).

8. *Information Contact.* Questions regarding this Policy Letter should be directed to William Coleman, Deputy Administrator, 202–395–3505 or Linda Mesaros, Deputy Associate Administrator, 202–395–4821, facsimile 202–395–5105. The address is Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503.

9. *Judicial Review.* This Policy Letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any persons. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this Policy Letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this Policy Letter.

10. *Effective Date.* This Policy Letter is effective 30 days after the date of issuance.

Steven Kelman,

Administrator.

[FR Doc. 95–23881 Filed 9–25–95; 8:45 am]

BILLING CODE 3110–01–M

Office of Federal Procurement Policy; Policy Letter on Subcontracting Plans

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: OFPP is requesting comments on a proposed Policy Letter on Subcontracting Plans as required by section 8(d) of the Small Business Act and amended by the Federal Acquisition Streamlining Act of 1994 (FASA).

SUMMARY: It is a fundamental policy of the United States Government that a fair proportion of its contracts be placed with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women and that such businesses be provided the maximum practicable opportunity to participate as subcontractors in the performance of Government prime contracts consistent with their efficient performance.

Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) requires that before award can be made of a contract that exceeds $500,000 ($1 million in the case of construction of a public facility) to other than a small business concern, the apparent successful offeror must negotiate a subcontracting plan describing how it will provide subcontracting opportunities to small businesses.

This Policy Letter, when issued in final, will supersede and cancel OFPP Policy Letter 80–1, ''Pubic Law 95–507, Section 211, SubContracting: Agency Coordination with the Small Business Administration Resident Procurement Center Representatives,'' dated January 24, 1980; OFPP Policy Letter 80–2, ''Regulatory Guidance on Section 211 of Public Law 95–507,'' dated April 29, 1980; Supplement No. 1 to Policy Letter 80–2, dated May 29, 1981; and OFPP Policy Letter 80–4, ''Women's Business Enterprise Program,'' dated April 29, 1980. The Policy Letter consolidates previously issued guidance contained in the above Policy Letters; adds clarification on issues that have arisen since the issuance of the earlier Policy Letters; addresses the FASA concern about the burden of government-unique requirements for companies supplying commercial items by establishing a preference for commercial plans; and provides additional guidance on the administration and enforcement of subcontracting plans and liquidated damages.

COMMENT DATE: Comments must be received on or before November 27, 1995.

ADDRESSES: Comments should be submitted to Linda Mesaros, Deputy Associate Administrator, Office of Federal Procurement Policy, New Executive Office Building, Room 9001, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Linda Mesaros at 202–395–4821.

Steven Kelman,

Administrator.

Policy Letter 94–X

To the Heads of Executive Departments and Establishments

Subject: Policy Regarding SubContracting Plans

1. *Purpose.* This directive provides Executive Branch policies concerning subcontracting plans required by section 8(d) of the Small Business Act (15 U.S.C. 637(d)) as amended by the Federal Acquisition Streamlining Act of 1994 (FASA).

2. *Supersession Information.* This Policy Letter supersedes and cancels OFPP Policy Letter 80–1, Public Law 95–507, Section 211, ''Subcontracting: Agency Coordination with the Small Business Administration Resident Procurement Center Representatives,'' dated January 24, 1980; OFPP Policy Letter 80–2, ''Regulatory Guidance on Section 211 of Public Law 95–507,'' dated April 29, 1980; Supplement No. 1 to Policy Letter 80–2, dated May 29, 1981; and OFPP Policy Letter 80–4, ''Women's Business Enterprise Program,'' dated April 29, 1980.

3. *Authority.* This Policy Letter is issued pursuant to section 6 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405.

4. *Definitions.*

a. *Small business concern.* Means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121.

b. *Small business subcontractor.* Means a concern, including its affiliates, whose (1) number of employees does not exceed 500 employees, provided the subcontract is $10,000 or less, or (2) number of employees or average annual receipts does not exceed the size standard under 13 CFR 121.601 when the value of the product or service it is providing on a subcontract exceeds $10,000.

c. *Small disadvantaged business concern.* Normally means a small business concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and that has its management and daily business controlled by one or more such individuals. The term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one of these entities, that has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and that meets the requirements of 13 CFR Part 124. This definition may not apply to all agencies when a different one is established by statute.

d. *Socially disadvantaged individuals.* Means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals. Individuals who certify that they are members of these named groups, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Subcontinent-Asian Americans, are considered to be socially disadvantaged.

(1) Subcontinent-Asian Americans means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, Nepal, or the Maldive Islands.

(2) Asian-Pacific Americans means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia,

Indonesia, Singapore, Brunei, Republic of the Marshall Islands, the Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru.

(3) Native Americans means American Indians, Eskimos, Aleuts, and Native Hawaiians.

e. *Economically disadvantaged individuals.* Means a socially disadvantaged individual whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged (see 13 CFR Part 124).

f. *Small business concerns owned and controlled by women (women-owned small business concerns).* Means a small business concern (1) which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (2) whose management and daily business operations are controlled by one or more women.

g. *Subcontract.* Means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for contract performance, contract modification, or subcontract. However, purchases from a corporation, company or division which are affiliates, as defined in 13 CFR 121.401, of a prime contractor are not considered ''subcontracts.''

h. *Individual contract plan.* Means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals which are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

i. *Master plan.* Means a subcontracting plan that contains all of the required elements except goals and may be incorporated into an individual contract plan provided the master plan has been approved.

j. *Commercial plan.* Means a subcontracting plan covering the offeror's fiscal year and which is applicable to the entire production of commercial items sold by either the entire company or portion thereof (e.g., division, plant, or product line). As used in this Policy Letter, the term ''commercial item'' is a product or service that satisfies the definition of commercial item in section 8001 of FASA (41 U.S.C. 403).

k. *Failure to make a good faith effort to comply with the subcontracting plan.* Means willful or intentional failure to perform in accordance with the requirements of the subcontracting plan, or willful or intentional action to frustrate the plan.

5. *Background*

a. It is a fundamental policy of the United States Government that a fair proportion of its contracts be placed with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women and that such businesses be provided the maximum practicable opportunity to participate as subcontractors in the performance of Government prime contracts consistent with their efficient performance. In furtherance of the policy for providing the maximum practicable opportunity to small business concerns to perform as subcontractors on Government contracts, the laws governing Federal procurement do not require contractors to subcontract specific percentages of the work on Government contracts to small, small disadvantaged, or women-owned small business concerns. The policy does require that to the extent a Government contractor does subcontract a portion of the work on the Government contract, it must provide the maximum practicable opportunity to small, small disadvantaged, and women-owned small business concerns to perform the subcontracted portion of that contract.

b. Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) requires that before award can be made of a contract that exceeds $500,000 ($1 million in the case of construction of a public facility) to other than a small business concern, the apparent successful offeror must negotiate a subcontracting plan describing how it will provide subcontracting opportunities to small businesses. This requirement does not apply if the contract offers no subcontracting opportunities. The subcontracting plan shall become a material part of the contract.

c. Regulations implementing the policies of Section 8(d) of the Small Business Act have been implemented in Part 19 of the Federal Acquisition Regulation (FAR). This Policy Letter consolidates previously issued guidance contained in Policy Letters 80–1, 80–2 and its Supplement No. 1, and 80–4; adds clarification on issues that have arisen since the issuance of the earlier Policy Letters; addresses the Congress' concern about the burden of government-unique requirements for companies supplying commercial items by establishing a preference for commercial plans; and provides additional guidance on the use and administration of commercial plans.

6. *Solicitation and Subcontracting Plan Requirements*

a. The FAR shall prescribe a clause entitled ''Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns'' to be inserted in solicitations and contracts when the acquisition is expected to exceed the simplified acquisition threshold, except when (1) A personal services contract is contemplated, or (2) the contract and all of its subcontracts will be performed and awarded entirely outside of the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands. This clause shall express the policy of the United States for providing maximum practicable opportunity to small, small disadvantaged, and women-owned small business concerns to participate in the performance of prime contracts let by the Federal Government and subcontracts. The clause also shall require prime contractors to establish procedures to ensure timely payment to such small business concerns performing as subcontractors and commit the prime contractor to carrying out these policies and cooperating with the Small Business Administration (SBA) in studies to determine the extent of the prime contractor's compliance. The requirements of the clause also shall apply to small business concerns.

b. For each subcontract the prime contractor will award to a small business subcontractor, the prime contractor must obtain a written representation from the subcontractor that it qualifies under the size and ownership standards applicable for the subcontract (see 13 CFR 121.911 and the definition at subparagraph 4.b. The contractor may rely on this written representation, unless it has reason to believe otherwise. Before including a firm on its source list, a contractor should obtain written acknowledgment that the potential subcontractor is aware of the adverse consequences for misrepresentation provided for in Section 16(d) of the Small Business Act (15 U.S.C. 645(d)).

(1) Upon receipt of a formal protest, the Office of Government Contracting in the SBA has the final authority to determine the eligibility of a concern to be designated as a small business and to answer inquiries from prime contractors and others regarding such eligibility.

(2) Similar authority to make determinations of the formally protested eligibility of small disadvantaged businesses has been given to the SBA's Office of Minority Enterprise Development.

(3) Women-owned eligibility determinations will be made in accordance with regulations established by the SBA.

c. The FAR shall prescribe a clause entitled ''Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan'' in solicitations and contracts if the award is expected to exceed $500,000 ($1 million for construction of a public facility), unless the acquisition is reserved for small business concerns, offers no subcontracting opportunities, or unless the contract will be performed and awarded outside the United States, its possessions, Puerto Rico or the Trust Territory of the Pacific Islands. Other exceptions include contracts with Federal Prison Industries and contracts with workshops for the blind or severely disabled awarded under the provisions of the Javits-Wagner-O'Day Act. The clause shall apply to all other entities including large businesses, state and local governments, non-profit associations, public utilities, Historically Black Colleges and Universities, Minority Institutions, and foreign-owned firms that receive Federal contracts if any portion of that contract will be performed in the United States. There is an exemption to the clause for the Department of Defense (DOD), the Coast Guard, and National Aeronautics and Space Administration (NASA) in regard to Historically Black Colleges and Universities and Minority Institutions. The actual or estimated value of the contract for the entire term of the contract, including any option periods, determines whether the threshold is met. The clause shall require that the subcontracting plan include the following elements:

(1) A statement of total dollars to be subcontracted and statements of total dollars to be subcontracted to small business, to small disadvantaged business, and to

women-owned small business. Small disadvantaged and women-owned small business dollars are included in the small business category. This means, for example, that a small business owned by a minority woman is counted as a small business, a small disadvantaged business, and as a women-owned small business. An individual contract plan for a contract with options shall contain a separate statement for the basic contract and individual statements for each option.

(2) Separate goals expressed as percentages of total planned subcontracting dollars for small, small disadvantaged, and women-owned small business. Unless a commercial plan is involved, goals are stated separately for the basic contract and for any option periods or quantities.

(3) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals and a description of the methods used to determine the proportionate share of indirect costs to be incurred with small, small disadvantaged, and women-owned small business concerns.

(4) A description of the principal types of supplies and services to be subcontracted (to large, small, small disadvantaged, and women-owned small business concerns) and an identification of the specific types to be subcontracted to each small business category.

(5) A description of the methods that were used in developing the subcontracting goals.

(6) The name and a description of the duties of the individual employed by the offeror who will administer the offeror's subcontracting program.

(7) A description of the methods used to identify potential sources for solicitation purposes. Offerors may rely on information contained in SBA's Procurement Automated Source System (PASS). The information included in PASS will be incorporated into the Federal Acquisition Computer Network (FACNET) Contractor Registration Data Base.

(8) A description of the efforts the offeror will make to assure that small, small disadvantaged, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns clause in all subcontracts over the simplified opportunities.

(10) Assurances that subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 ($1 million for construction of a public facility) will adopt a plan similar to the plan agreed to by the offeror. For individual contract plans, offerors are required to describe their procedures for reviewing, approving, and monitoring their subcontractors' compliance with subcontracting plans. Copies of subcontractors' subcontracting plans must be retained by the prime contractor until completion of the subcontract. A ''certificate of compliance'' or statement from the subcontractor that it has a subcontracting plan does not satisfy this requirement.

(11) Assurances that the offeror will cooperate in any studies or surveys that may be required; submit periodic reports so the Government can determine the extent of compliance by the offeror with the subcontracting plan; submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, following the instructions on the form or as provided in agency regulations; and ensure that its subcontractors agree to submit SF 294s and 295s.

(12) A description of the type of records that will be maintained concerning procedures that will ensure compliance with the plan and its goals.

(13) A description of the efforts that will be made to locate and award subcontracts to small, small disadvantaged, and women-owned small business concerns.

d. A contractor's failure to make a good faith effort to comply with the subcontracting plan is a material breach of the contract. Section 8(d)(4)(F) of the Small Business Act requires that contracts that include the Utilization and Subcontracting Plan clauses also contain a clause requiring the payment of liquidated damages upon a finding that the contractor failed to make a good faith effort to comply with the requirements of these clauses. The FAR shall prescribe a clause entitled ''Liquidated Damages-Subcontracting Plan'' that shall describe the procedures for making such a determination.

e. Nothing in this Policy Letter precludes an agency from establishing additional requirements regarding subcontracting plans.

(1) The contracting officer may also use informational goals in solicitations to inform potential offerors of the Government's expectations concerning the goals in an acceptable subcontracting plan. Informational goals shall not be interpreted as minimal acceptable requirements.

7. *Instructions to Contracting Officers.* Contracting officers are required to determine the acceptability of the subcontracting plan before awarding the contract. The following policy and procedural guidance is provided to contracting officers to assist them in making their determinations. This guidance is not intended to be all inclusive. Ultimately, there is no substitute for the reasoned and objective judgment of a contracting officer exercised on a case-by-case basis.

a. *Reviewing the Subcontracting Plan.* Many factors warrant consideration in reviewing the adequacy of a subcontracting plan. Consequently, the contracting officer should be flexible and avoid establishing arbitrary criteria. Potential weaknesses in the plan should be identified and brought to the attention of the offeror. For example, by regulation, a zero goal is not acceptable. A positive goal is required to establish a gauge for measuring results and to provide an incentive for continuing efforts to increase the dollar value of subcontracts placed with small, small disadvantaged, and women-owned small business concerns. During the contract period, the contractor is expected to make continuing efforts to locate and identify new small, small disadvantaged, and women-owned small business concerns as potential subcontractors. Subcontracting goals should not be negotiated upward if they would significantly increase the Government's cost or seriously impede the attainment of the acquisition's objective. The contracting officer shall take the following actions:

(1) Evaluate the anticipated potential for subcontracting to small, small disadvantaged, and women-owned small business concerns taking into consideration the make-or-buy policies or programs of the offeror, the nature of the products or services to be subcontracted and the known availability of small, small disadvantaged, and women-owned small business concerns in the geographical area where the work will be performed.

(2) If informational goals are stated in the solicitation, require an offeror that proposes lower goals to explain why its subcontracting plan cannot achieve the stated goals.

(3) If the proposed goals are questionable, advise the offeror of (a) the names of any known potential small, small disadvantaged, and women-owned small business subcontract sources and (b) the availability of the sources of information on potential small, small disadvantaged, and women-owned small business subcontractors. The contracting officer shall emphasize that one or more of the available sources of information concerning potential small, small disadvantaged, and women-owned small business subcontract sources should be considered in developing realistic and acceptable goals. Sources of information include:

(i) Local SBA offices.

(ii) The Department of Commerce, Minority Business Development Agency (MBDA). An offeror can ask for access to the MBDA's Profile System.

(iii) State, county, and city government minority business offices.

(iv) Small, minority, and women business associations.

(v) Local chambers of commerce.

(vi) The Commerce Business Daily (CDB), the FACNET Contractor Registration Data Base, newspapers, and other communication media. An offeror can synopsize in the CBD or advertise in trade newspapers or journals seeking competition for subcontracts and to increase participation by small, small disadvantaged, and women-owned small business concerns to meet subcontract goals.

(4) Obtain advice and recommendations of the agency Small Business Specialist and the SBA Procurement Center Representative (SBA PCR) concerning the acceptability of the proposed plan. The FAR shall require that the contracting officer provide the SBA PCR a reasonable opportunity to review subcontracting plans and make recommendations, which are advisory in nature.

(5) Consider the offeror's performance on other Government contracts that required subcontracting plans. The contracting officer should encourage the offeror to identify other contracts that had subcontracting plans and contact the contracting officers who administered those earlier plans to ascertain whether the objectives of those plans were realized and whether required reports were submitted in a timely manner. Overall compliance should be considered, not merely whether or not the goals established in the plan were met.

(6) Incorporate by reference the terms of a master plan into an individual contract plan provided:

(a) The master plan contained all the required elements;

(b) The master plan has been approved within the last three years and the SBA PCR had an opportunity to comment on the master plan;

(c) Subcontract goals for small, small disadvantaged, and women-owned small business concerns are specifically set forth in each contract or modification over the threshold;

(d) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification; and

(e) The contracting officer has copies of the complete plan.

(7) A preliminary subcontracting plan may be accepted for letter contracts and similar undefinitized instruments provided negotiation of the final plan is accomplished within 90 days after award or before definitization, whichever occurs first.

b. Award of Contract or Contract Modification

(1) After award of a contract or contract modification containing a subcontracting plan, the contracting officer shall provide a copy of the award document to the SBA Area Director for Government Contracting in the Area where the contract will be performed. A copy of any subcontracting plan submitted pursuant to a sealed bid solicitation or the subcontracting plan incorporated into a negotiated contract or modification shall be provided to the SBA PCR.

(2) The following policies apply to contract modifications other than options. The Small Business Act treats contracts and modifications separately. If a subcontracting plan is not required at the time of award because the value of the contract is below the threshold, a subcontracting plan will not be required even if a subsequent modification increases the value of the contract to an amount exceeding the threshold. The only exception to this rule is when the value of the modification itself exceeds $500,000 ($1 million for construction of a public facility). Moreover, it is not necessary to obtain another subcontracting plan for a modification exceeding the applicable threshold if the contract already includes a subcontracting plan. However, the original plan must be modified to adjust goals accordingly for the new effort. If the value of the modification does not exceed the threshold, the original plan does not need to be modified.

(3) The following policies apply to contractors and subcontractors that no longer meet the size or ownership status as a small, small disadvantaged, or women-owned small business concern during the period of contract performance as a result of growth, a buy-out, or a merger:

(a) A subcontracting plan is not required of any former small business prime contractor that, during contract performance, no longer meets the definition of a small business concern. Similarly, the requirement to submit periodic reports does not apply. However, a subcontracting plan is required if the prime contractor erroneously considered itself small at the time of contract award. Under this circumstance, the contracting officer should request a subcontracting plan from the contractor and the responsibility to submit the periodic reports would apply.

(b) If a prime contractor awards a subcontract to a small business, it may continue to report those subcontract dollars as a small business award for the duration of the subcontract, including all option years.

c. Contract Awards Involving Commercial Plans

(1) A commercial plan is an annual subcontracting plan which is effective during the offeror's fiscal year and applies to all of the offeror's production of both commercial and noncommercial items. This type of plan is useful for companies that normally rely on their existing network of suppliers for all of their business and do not enter into specific subcontracts to fill Government contracts. The plan may apply to the production of the offeror's entire company, or it may be limited to a corporation, company, division, plant or product line. A commercial plan is approved by the first Federal agency awarding a contract for commercial products or services during the contractor's fiscal year, and is applicable to every additional Federal contract for those items awarded to that contractor during the contractor's same fiscal year. The cutoff date for applying a previously approved commercial plan to additional Federal contracts is the end of the company's fiscal year in which the commercial plan was approved. If a contract extends beyond the expiration date of the plan, a new plan must be obtained and approved by the contracting officer monitoring the plan. The new plan should be requested 30 days before the old plan expires.

(2) Commercial plans are recognized as one way the burdens of government-unique requirements can be reduced for companies that provide commercial items on Government contracts and subcontracts.

(a) It is the policy of the United States Government that commercial plans, when authorized under this Policy Letter, shall be the preferred method of compliance with the requirements of section 8(d) of the Small Business Act. Commercial plans are only authorized for products or services that meet the definition of commercial item as provided in subparagraph 4j.

(b) Agencies, in all solicitations expected to trigger the requirements for a subcontracting plan, shall inform prospective offerors of the opportunity for them and/or their subcontractors to develop commercial plans if they are supplying commercial items. Commercial plans are authorized for subcontractors that provide commercial items under a prime contract even when the prime contractor is not supplying a commercial item.

(3) When a contractor has a commercial plan previously approved by another agency's contracting activity or another Federal agency for the company's fiscal year, the contracting officer shall obtain a copy of the plan and the approval document from the contractor. These documents shall be incorporated into the contract.

(4) Since a commercial plan may be applicable to contracts awarded by more than one contracting activity or Federal agency, contracting officers must ensure that the commercial plan is not allowed to expire prior to the negotiation of a new commercial plan. This eventuality may occur when the contract of the contracting officer monitoring the plan is completed and no new contract is awarded to that contractor during the contractor's fiscal year. To prevent such an occurrence, 30 days prior to contract completion, the contracting officer monitoring the commercial plan shall obtain from the contractor the name of the contracting officer administering the contract with the latest completion date and arrange for the transfer of the monitoring responsibilities to that contracting officer.

d. Contract Administration of Subcontracting Plans

(1) The contracting officer administering a contract with an individual contract plan is responsible for monitoring receipt of the SF 294 reports. The SF 294 is used to evaluate the contractor's progress toward meeting the subcontracting goals established in the individual contract plan. The contracting officer shall pay particular attention to reviewing the SF 294 required at contract completion. The SF 294 is not required for contracts with an approved commercial plan.

(2) The SF 295 is used to evaluate the contractor's progress toward meeting the subcontracting goals in subcontracting plans. The contracting officer monitoring a subcontracting plan is responsible for ensuring receipt and review of the SF 295. The SF 295 report summarizes all subcontract awards under contracts with a particular federal agency and is due on or before October 30th of each year. Since this report measures progress during the Government's fiscal year and the commercial plan applies to the contractor's fiscal year, a second SF 295 will be required from contractors with commercial plans whose fiscal year is different from the Government's. This second SF 295 report shall enable the contracting officer monitoring the commercial plan to evaluate progress in meeting subcontracting goals by comparing the applicable report with the plan.

(3) For contracts containing a commercial plan, the contracting officer monitoring the plan shall review the contractor's performance at the close of the fiscal year for which the plan is applicable in order to determine whether it is appropriate to assess liquidated damages under the FAR clause entitled ''Liquidated Damages-Subcontracting Plan.'' For contracts containing individual contract plans, the contracting officer should evaluate contract performances at the time of contract completion, unless the contract contains options for extending contract performance. In this case, a decision would be made upon completion of the initial period of performance and at the end of each option period.

(4) In making a determination regarding the assessment of liquidated damages, the

contracting officer should consider whether the contractor made a good faith effort to comply with the subcontracting plan. Failure by the contractor to meet the subcontracting goals established in the subcontracting plan does not, in and of itself, constitute a failure to make a good faith effort. The contracting officer shall consider the totality of the contractor's effort. If the contractor failed to make a good faith effort to comply, section 8(d) of the Small Business Act mandates that liquidated damages must be assessed. When considering whether a good faith effort has been made, the contracting officer should examine whether the contractor:

(a) Submitted the periodic reports required by the subcontracting plan in a timely manner.

(b) Failed to meet its subcontracting goals because of a lack of diligence. Factors such as unavailability of anticipated sources or unreasonable prices may impact on the achievement of the contractor's goals.

(c) Made efforts to identify, contact, solicit and consider for award small, small disadvantaged, and women-owned small business concerns. Factors such as the contractor's efforts to request assistance from SBA or to reach out to other organizations, i.e., trade associations, business development associations, etc., in an effort to locate small, small disadvantaged, and women-owned small business concerns should be considered in evaluating the contractor's efforts.

(d) Maintained records and established procedures to comply with the subcontracting plan. The contracting officer should look for documentation of efforts to contact organizations to locate small, small disadvantaged, and women-owned small business concerns, participation in business fairs, information on who was solicited for particular solicitations, and any documentation of reasons for not awarding to small, small disadvantaged, or women-owned business concerns.

(e) Maintained a company official to administer the subcontracting program and monitor and enforce compliance.

(f) Assisted small, small disadvantaged, and women-owned small business concerns in responding to solicitations issued by the contractor.

(5) If the contracting officer's initial assessment is that the contractor did not make a good faith effort to comply with the subcontracting plan, the contracting officer must notify the contractor, in writing, calling the contractor's attention to the suspected failure. As part of the notification, the contractor must be given the opportunity to demonstrate that good faith efforts have been made. The contractor must be advised that failure to respond to the notice may be taken as an admission that no valid explanation exists.

(6) Before making a final decision, the contracting officer shall consider the contractor's response, if any, along with any pertinent information available. The contracting officer's final decision shall be documented in a ''final decision'' which is appealable by the contractor under the ''Disputes'' clause of the contract. The contracting officer's final decision should include:

(a) A description of the contractor's failure;

(b) Reference to the appropriate contract terms;

(c) A statement of the factual areas of agreement and disagreement;

(d) A statement of the contracting officer's decision with supporting rationale;

(e) A demand for liquidated damages; and

(f) An explanation of the contractor's appeal rights.

(7) For a contract containing an individual contract plan, the amount of liquidated damages to be assessed is the sum of the amounts by which the contractor failed to meet each subcontracting goal for small, and/or small disadvantaged, and/or women-owned small business concerns. For contracts containing a commercial plan, the amount of liquidated damages to be assessed is calculated based upon the total payments made under contracts subject to the commercial plan as a percentage of the contractor's total sales. For example, if the contractor's total sales are $50 million and the Government's total payments under contracts subject to the commercial plan are $5 million, the Government accounts for 10 percent of the contractor's total sales. The commercial plan stated that the subcontracting dollars to support the sales would be $20 million. Therefore, the pro rata share of subcontracting attributable to the Government contracts would be 10 percent of the $20 million or $2 million. If the contractor failed to achieve its small business goal by 1 percent, the liquidated damages would be calculated as 1 percent of the $2 million or $20,000. The contracting officer shall make similar calculations for each category of small business where the contractor failed to achieve its goal and the sum of the dollars for all of the categories equals the amount of the liquidated damages to be assessed. The contracting officer of the agency that originally approved the plan will exercise the functions of the contracting officer on behalf of all agencies that awarded contracts subject to the commercial plan.

(8) Liquidated damages shall be in addition to any other remedies available to the Government by law or under the contract.

8. *Responsibilities.* The Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this Policy Letter is published final in the Federal Register. Promulgation of final regulations within that 210 day period shall be considered issuance in a ''timely manner'' as prescribed in 41 U.S.C. 405(b).

9. *Information Contact.* Questions regarding this Policy Letter should be directed to Linda Mesaros, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone 202–395–3501, facsimile 202–395–5105.

10. *Judicial Review.* This Policy Letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any persons. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this Policy Letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this policy letter.

11. *Effective Date.* The Policy Letter is effective 30 days after the date of issuance.

Steven Kelman,

Administrator.

[FR Doc. 95–23880 Filed 9–25–95; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

United Fire Technology, Inc.; Order of Suspension of Trading

September 20, 1995.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of United Fire Technology, Inc. (''United Fire'') because of questions regarding the accuracy of assertions by United Fire in documents sent to the National Association of Securities Dealers, Inc., market-makers of the stock of United Fire, other broker-dealers, and to investors, and by others, that, among other things: (1) United Fire's products have been, or are being, tested and/or certified by various independent testing centers, including the U.S. Navy Firefighting School; (2) the company has the capability to manufacture its products; (3) the identity of the individuals in control of United Fire; and (4) information regarding the liabilities of the company and its stock issuances.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, September 21, 1995 through 11:59 p.m. EST, on October 4, 1995.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 95-23838 Filed 9-25-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 36252; File No. SR–GSCC–95–02]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Proposed Rule Change Relating to Netting Services for the Non-Same-Day-Settling Aspects of Next-Day and Forward-Settling Repurchase and Reverse Repurchase Transactions

September 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 1, 1995, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. On August 29, 1995, and September 19, 1995, GSCC amended the filing.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC proposes to modify its rules to begin implementing netting and risk management services for the non-same-day-settling aspects of next-day and forward-settling repurchase and reverse repurchase transactions involving government securities as the underlying instrument (''repos'').[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

GSCC plans to offer its repo services in three phases. Phase I involves providing comparison and netting services for next-day and forward-settling repo transactions, Phase II will focus on providing comparison, netting, and risk management services for open repos, and Phase III will focus on providing intraday netting and risk management services for same-day settling aspects of repo transactions.

In a previous rule filing the Commission approved the comparison element of Phase I,[5] and GSCC implemented its comparison service for next-day and forward-settling repos on May 12, 1995. Currently, there are forty members participating in this process. In this rule filing, GSCC seeks the authority to implement the next stage of Phase I of its repo services, which is providing netting and risk management services for the non-same-day-settling aspects of next-day and term repo transactions.[6]

All non-same-day settling repo legs (*i.e.*, the close leg of overnight and term repos and the start leg of forward-settling repos) in GSCC netting-eligible securities will be netted with regular buy/sell (*i.e.*, cash) activity and Treasury auction purchases in GSCC's system. Thus, a participant's repo activity will be netted with its cash activity and Treasury auction purchases to arrive at a single net position in the security. Appropriate netting output, including the breakdown of the repo versus the cash component of each net settlement position, will be generated and distributed to participants.

GSCC believes that incorporating repos into GSCC's net will afford its members and the marketplace in general a number of important benefits, including the following: guaranteed settlement, enhanced risk protection, reduction in funds wire transfer activity, elimination of the bulk of the underlying collateral movements, reduction of daylight overdraft charges, and provision of an automated coupon tracking system.

The repo netting process will begin in test mode and then move into ''non-live'' production. Once the repo netting system is running smoothly (*i.e.*, when GSCC and participating members are satisfied with the test results and generated output) and the Commission approves this rule filing, GSCC will be ready to fully implement repo netting.

Netting implementation entails a number of rule changes including, most notably, substantial modifications to GSCC's forward margin and clearing fund procedures and methodologies. The necessary rule changes are set forth below.

(1) *Eligibility for Netting*

GSCC netting members, other than interdealer broker netting members, will be able to participate in repo netting upon being designated by GSCC's Membership and Standards Committee as eligible for such services.[7] This determination of eligibility will be based on: (1) satisfactory participation in the repo comparison service, (2) demonstration by the member of its ability to meet its obligations with regards to repos, and (3) execution by the member of documentation provided by GSCC ensuring that the netting and settlement of its repos is to be done in conformance with GSCC's rules.

A single repo transaction could have two corresponding netting-eligible settlements. In other words, both the start and the close legs of a repo transaction may be netted if data on the repo is received and compared by GSCC prior to the scheduled settlement date for the start leg.

In order for a start leg or a close leg of a repo transaction to be eligible for netting and settlement through the netting system, it must meet various requirements: (1) the repo must be compared by GSCC, (2) the number of business days between the scheduled settlement date for the close leg and the business day on which the repo is submitted to GSCC must not be greater than the maximum number of business days established by GSCC which initially will be no more than 195

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letters from Jeffrey F. Ingber, General Counsel, GSCC, to Christine Sibille, Senior Counsel, Division of Market Regulation, Commission (August 24, 1995, and September 14, 1995).

[3] The text of the proposed revised rules is attached as Exhibit A to File No. SR–GSCC–95–02 and is available for review in the Commission's Public Reference Room.

[4] The Commission has modified the text of the summaries prepared by GSCC.

[5] Securities Exchange Act Release No. 35557 (March 31, 1995), 60 FR 17598 [File No. SR–GSCC–94–10] (order approving proposed rule change relating to implementing a comparison service for repurchase and reverse repurchase transactions involving government securities as the underlying instrument).

[6] Future phases will add the following repo services (not necessarily in this order): (1) an intraday start leg settlement service, (2) comparison, netting, and risk management services for open repos including the tracking of rate changes, (3) the tracking and facilitation of collateral substitutions, (4) enhanced comparison services for forward-starting repos, (5) interest rate protection for forward-starting repos, and (6) intra-day netting, settlement, and risk management services for all same-day-settling start and close legs.

[7] Interdealer broker netting members will not be eligible for GSCC's repo netting service during this first phase because brokering in the repo market currently is done on a ''giveup'' basis with interdealer brokers giving up the names of each counterparty to the other counterparty and dropping completely out of the transaction. The various issues related to GSCC's acting with its interdealer broker members as principals with regard to repo transactions will be addressed in the next repo netting rule filing.

calendar days,[8] (3) netting of the leg must occur on or before its scheduled settlement date (*i.e.*, the leg cannot be a same-day settling leg), (4) data on each side of the repo must be submitted to GSCC by members designated as eligible to participate in the repo netting process, (5) the underlying securities must be eligible for netting, and (6) the maturity date of the underlying securities must be no later than the scheduled settlement date of the leg. A forward-settling start leg,[9] if submitted to GSCC within 195 calendar days of the scheduled settlement date for the close leg associated with that start leg, will not be submitted into the netting system until the scheduled settlement date for that start leg. At that time, it will drop into the net as does any other trade, and its settlement will become guaranteed by GSCC. A forward-settling close leg, if submitted within 195 calendar days of its scheduled settlement date, will not be submitted to the netting system until the scheduled settlement date for the associated start leg.

(2) Netting Process

As noted above, each night a participating repo netting member's eligible repo transactions will be netted with its regular buy/sell cash activity and Treasury auction purchases in the same CUSIP to establish a single net position in the security. For netting purposes, the settlements associated with repo start legs and reverse repo close legs will be treated as short positions. The settlements associated with repo close legs and reverse repo start legs will be treated as long positions. The difference between a member's total shore activity and its total long activity within a CUSIP is its net position in the CUSIP.

While netting will result in the establishment of a single net position for each participant in each of its active securities, GSCC will provide each participant with a breakdown of its net positions by reporting for each security: (1) The net buy/sell position, (2) the net repo position, and (3) the total net position. A participant's forward settling net position for a security is recalculated on a daily basis. Forward settling net positions automatically convert into deliver or receive obligations on their scheduled settlement dates.

(3) Settlement

GSCC conducts two settlement processes on a daily basis: a morning funds-only settlement process and a day-long securities settlement. For securities settlement, each netting member is obliged to deliver to or to receive from GSCC its net deliver or receive obligation in a given CUSIP that is generated as a result of the netting process. Securities settlement for repo legs will not differ from securities settlement for regular buy/sell activity.

For funds-only settlement, amounts pertaining to repos will be added to amounts pertaining to regular buy/sell activity and Treasury auction purchases and will be reported within the existing categories. In addition, the daily net funds-only settlement amount for each netting member will be adjusted to reflect certain changes to CGCC's margining processes. With these changes, forward margin debits will be paid through to the credit side, interest will be paid to members with forward margin debits and will be paid by members with forward margin credits [as discussed below in Section (7)], and forward debit margin obligations will be satisfied on a cash-only basis.

(4) Coupon Protection

In a repo transaction, when the start leg is initiated, securities are moved from the account of the funds borrower (*i.e.*, the long side for the close leg) to the account of the funds lender (*i.e.*, the short side for the close leg) in exchange for a negotiated cash amount. Securities remain in the account of the funds lender until the settlement of the close leg takes place. However, the funds lender is not entitled to any coupon payments made while the securities are in its possession. In order to ensure that coupon payments related to the underlying collateral are collected by the appropriate party, GSCC will automatically pass the coupon payment from the funds lender (the holder of the securities) to the funds borrower when the repo term crosses a coupon payment date.

The coupon payments that are made by the issuer directly to the funds lender's clearing bank on coupon date therefore will be passed through to the funds borrower by GSCC on coupon date when appropriate. On the coupon payment date, GSCC will pass the coupon payment from the funds lender (short side) to the funds borrower (long side) when (1) the coupon date is after the repo start date and (2) the repo settlement date is on or after the coupon date. GSCC's current procedures for paying coupon on all fail obligations will not change and will apply to fail obligations arising from repos as well.

(5) Collateral Substitution

In this initial phase of repo netting, GSCC will not perform collateral substitutions on an automated basis. However, GSCC will facilitate the ability of participants to make collateral substitutions by allowing them to designate new underlying collateral for a repo transaction through use of the ''cancel and correct'' feature of its comparison system. GSCC's operations staff will manually process the collateral substitution as it does now for clearing fund securities margin. An automated facility for performing repo collateral substitutions will be provided as part of a future phase of repo services.

(6) Guarantee of Settlement

When GSCC nets repo transactions, it interposes itself between the two submitting participants for transaction settlement purposes as it does for cash transactions. For example, in the case of a repo close leg, GSCC will interpose itself between the participant that submitted the repo (the long participant for the close leg) and the participant that submitted the corresponding reverse (the short participant for the close leg). In doing so, GSC assumes contraparty responsibility and guarantees settlement of all repos that enter its netting system, including the return of the underlying collateral to the funds borrower and both the return of principal (repo start amount) and the payment of interest to the term of the repo transaction to the funds lender.

Again, forward-settling repo start legs are eligible for netting but are not netted or guaranteed until they reach scheduled settlement date. Forward-settling repo close legs are not guaranteed until the settlement date of the associated start leg.

(7) Forward Margin

Because GSCC guarantees the settlement of all transactions once they are compared and netted, forward settling net positions are marked-to-the-market daily, and participating members are assessed forward margin accordingly in their daily funds settlement.[10] A member's required margin will continue to be recalculated daily; therefore, each day, the previous day's debit/credit will be reversed and a new forward margin obligation established.

Margin for cash trades will continue to be calculated by marking each

[8] *Supra* note 2. The September 19, 1995 letter amended the maximum number of business days between the scheduled settlement date for the close leg and the date on which the repo is submitted from 364 days to 195 calendar days.

[9] A forward-settling start leg is a start leg that is submitted one or more business days prior to its scheduled settlement date.

[10] Because forward-settling start legs are not guaranteed until the scheduled settlement date, such transactions are not margined.

transaction to-the-market using the following formula:

Market Value=GSCC Price×Par Amount+Accrued Coupon Interest Calculated to Scheduled Settlement Date

The resulting value is then subtracted from contract value to calculate the appropriate margin amount.

One significant change to the daily forward margin process for both cash and repo trades is that credit margin amounts will be used to fully offset debit margin amounts across CUSIPs with any remaining credits being paid out to participants in funds settlement. There will be the following exceptions to this pay-through policy: (1) As an initial measure, until GSCC is able to more extensively assess the risks that arise from paying through debit forward margin amounts to the credit side, GSCC will limit members' right to collect credit forward margin amounts to bank and category one dealer netting members that have been active in the netting system for at least sixty days, (2) if a member has been awarded Treasury securities at auction, GSCC's obligation to pay to such member a credit forward margin payment will be limited by the amount of debit forward margin payment(s) that under GSCC's rules the Federal Reserve Banks are not obligated to pay to GSCC, and (3) GSCC may suspend a member's right to collect credit forward margin if the member is placed on surveillance.

Another fundamental change to the daily forward margin process is that because credit margins will now be paid through, only cash may be used to post margin. Members will no longer be able to post collateral in advance in lieu of their cash forward margin obligations. Moreover, to take into account differences between the repo market and the when-issued cash market, including the fact that the liquidation process for repos involves a cost-of-carry element, forward margin calculations for repos will differ from those of cash market trades.

To margin a forward settling repo close leg to-the-market, GSCC will begin by calculating market value, using the following formula:

Market Value=GSCC Price×Par Amount+Accrued Coupon Interest Calculated to Current Date

The market value calculated will be subtracted from the repo's contract value [11] to establish a debit or credit collateral mark. Next, the repo financing mark for the transaction will be calculated. The rationale for including such a component is that if the member in the net short position (reverse side) fails, GSCC will replace the position by buying securities and putting them out on repo in the market and thus will incur a financing cost. Conversely, if the member in the net long position (repo side) fails, GSCC will replace the position by selling securities obtained by doing a reverse repo in the market and thus will create interest income potential. Therefore, GSCC will compute the financing mark and will include it in the clearing margin calculation. The formula used to calculate the financing mark will be:

Financing Mark=Market Value of Repo×GSCC Repo Rate×Number of Days to Scheduled Settlement Date÷360

The financing mark will be debited to the reverse (short) side and will be credited to the repo (long) side.

The total forward margin for repos will be calculated using the following formula:

Total Forward Margin=Collateral Mark+Financing Mark

The debit and credit margins calculated for the individual transactions comprising the participant's net settlement position will then be added together. As noted above, credit margins will offset debit margins. A participant's total forward margin will be the mathematical sum of the individual debit and credit margins calculated across all securities and across all settlement dates.

It should be noted that the GSCC repo rate used in margin calculations will be tailored to each individual repo transaction. GSCC will determine if the collateral underlying the repo is general or specific.[12] For general collateral repos, GSCC will use the remaining term of the repo to determine the appropriate market repo rate. For specific collateral repos, GSCC will determine the specific repo rate by CUSIP and the remaining term of the repo. GSCC will use multiple market sources to obtain repo rates which will be monitored on a daily basis.

In designing the repo netting system, GSCC sought not to affect adversely the economics of the repo. Therefore, GSCC will pay interest on margin amounts collected and will charge interest on margin amounts paid on a daily basis using the effective Fed Funds rate. Because there will be a single margining process for all forward net settlement positions, interest will be paid on all debit forward margin payments and interest will be collected on all credit forward margin payments including margin payments relating to cash buy/sell trades.

It should be noted that GSCC's margining process effectively provides a daily repricing service that operates on a cash rather than a collateral basis. Therefore, participants will not need to build margin into the original value of the repo but rather should price the repo at the current market value. GSCC's margining and repricing services will provide a standardized approach for moving repo cash collateral with interest.

(8) Clearing Fund

GSCC's clearing fund was established to require each participant to collateralize its calculated exposure to ensure that GSCC has sufficient assets at all times to provide orderly settlement by meeting its payment and delivery obligations even if one or more of its participants became insolvent. Consistent with these objectives, the following changes will be made to the clearing fund in conjunction with repo netting implementation.

(a) *Clearing Fund Calculations Will Include Repo Activity.*

The net settlement positions used in clearing fund calculations will include the net of all cash and repo activities.

(b) *Change in the Clearing Fund Calculation.*

Currently, the funds settlement risk component of the clearing fund calculation and the securities settlement risk component of the clearing fund calculation each takes into account the average of a member's settlement activity over the most recent twenty business days. To better take into account the exposure presented by a member during periods of relatively high volume and activity (*e.g.*, quarterly refunding periods), each calculation will be changed to take into account the average of a member's most active ten days over the most recent seventy-five business days.[13]

(c) *Clearing Fund Calculations Will Anticipate the Settlement of the Current Day's Activities.*

The current clearing fund formula for any particular day fails to take into account the fact that certain trades that comprise net settlement positions are scheduled to settle on that day and that their settlement will change the nature of those positions. In this sense, the

[11] The contract value of the repo is the dollar value at which the close leg is to be settled.

[12] General collateral repos refer to repo transactions that do not specify the underlying collateral by a CUSIP number while specific collateral repos indicate by CUSIP number what the underlying security must be in a given transaction.

[13] This change will be made to both the general rules on clearing fund deposits and the specific rules for Category 2 dealer netting members and Category 2 futures commission merchants.

clearing fund adjusts to the changing nature of a member's net settlement positions one business day late.

To adjust for this, the clearing fund formula will be modified to anticipate any exposure resulting from the clearance of the present day's settlement transactions. Specifically, a member's outstanding net settlement positions for clearing fund purposes will be calculated alternately by disregarding and including the amount of securities underlying positions that are scheduled to settle that day. Thus, the portion of the clearing fund formal that reflects securities settlement exposure will be calculated by taking the average offset margin amount [14] or, if greater, the greatest of the following three calculations: (1) Fifty percent of that day's gross margin amount, (2) one hundred percent of that day's offset margin amount calculated by disregarding the amount of securities underlying such positions that are scheduled to settle that day, or (3) one hundred percent of that day's offset margin amount calculated as it is today.[15]

The calculation of the securities settlement exposure for a Category 2 dealer netting member or a Category 2 futures commission merchant netting member also is being revised to require such member to deposit the greatest of (1) such member's average gross margin amount based on the average of the ten most active days over the most recent seventy-five days, (2) such member's gross margin amount, or (3) such member's gross margin amount calculated by disregarding positions settling that day.

(d) *Addition of Repo Rate Volatility.*

A new component of the clearing fund formula will reflect the historical daily volatility in repo rates and its impact on the financing component of net settling positions involving repo activity. Specifically, GSCC will apply a set of percentages (''repo volatility factors'') to repos that constitute net settlement positions as necessary to cover the securities' settlement exposure posed by such repo activity. These percentages will be derived based on GSCC's research, which has been conducted with the assistance of its members, on historical repo rate volatility including repo market participants' analytics and raw data itself. GSCC is building and will maintain its own data base on the historical daily volatility of repo rates.

A member will be required to add to its clearing fund requirement the greater of (1) the product of the repo volatility factors and the market value of the member's repo transactions reduced by offsetting short and long positions based on maturity date and par amount (''offset repo volatility amount'') or (2) the average of a member's ten highest offset repo volatility amounts over the most recent seventy-five days.

(e) *Return of Excess Clearing Fund.*

Participants will have the ability to submit requests for the return of excess collateral on a monthly basis, as opposed to on a quarterly basis. This change is being made for a number of reasons. One is to help position GSCC to better accommodate market initiatives such as NSCC's Collateral Management Service, which facilitates market participants' management of their margin balances at clearing organizations and which ultimately will allow those market participants to move margin amounts from one clearing organization to another in an automated fashion. This change also responds to members' requests to make excess funds available more frequently.

(9) Loss Allocation

GSCC conducted an extensive review of its loss allocation procedures in conjunction with repo netting implementation and determined that the existing loss allocation procedures remain adequate and appropriate. Loss allocation, whether related to regular buy/sell activity or repo activity, will continue to be a function of the extent of a member's activity with the defaulting member done prior to the default.

(10) Obligation to Submit Trades

GSCC will amend its Rule 11, Section 3, to state that such rule, which requires a netting member to submit all eligible trades to GSCC for comparison and netting, is not applicable to a netting member's repo transactions. Rule 18, Section 4, will be added to require a repo netting member to submit for comparison and netting all repo trades eligible for netting to either GSCC, another Commission registered clearing agency, or to a clearing agency exempted by the Commission from clearing agency registration.

GSCC believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act and specifically with 17A(b)(3)(A) and (F) [16] because the proposed rule changes will allow GSCC to expand in a prudent manner its existing netting, settlement, and risk management services to a broader range of Government securities transactions and thus will facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the rule filing, and comments will be solicited by an important notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[14] The offset margin amount is the gross margin (the dollar value of a member's net settlement positions multiplied by the appropriate margin factors) as reduced by offsetting short and long positions based on maturity date and par amount. The average offset margin, as discussed above in (b), will take the average of offset margin from the ten most active days over the previous seventy-five days.

[15] Currently, securities settlement exposure is calculated as the greater of the average offset margin amount or 50% of the gross margin amount.

[16] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–95–02 and should be submitted by October 17, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23760 Filed 9–25–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36248; File No. SR–PHLX–95–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Increasing the Maximum Size of Options Orders Eligible for Automatic Execution

September 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 21, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Generally, public customer market and marketable limit orders for up to 25 option contracts are eligible for execution through the automatic execution (''AUTO-X'') feature of the PHLX's Automated Options Market (''AUTOM'') system.[1] The PHLX proposed to increase the maximum AUTO-X order size eligibility for public customer market and marketable limit orders for all equity and index options from 25 contracts to 50 contracts.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to increase the maximum order size eligibility for AUTO-X from 25 to 50 contracts. The PHLX notes that this number represents the maximum size of a permissible AUTO-X order, which is determined by the specialist in that option. Under the 10-up rule,[2] the minimum size of the Exchange's AUTO-X guarantee is 10 contracts.

AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,[3] is the PHLX's electric order routing, delivery, execution and reporting system for equity and index options. AUTOM is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor.

Certain orders are eligible for AUTOM's automatic execution feature, AUTO-X.[4] AUTO-X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO-X are handled manually by the specialist.

The Commission approved the use of AUTO-X as part of the AUTOM pilot program in 1990.[5] In 1991, the Commission approved a PHLX proposal to extend AUTO-X to all equity options.[6] As noted earlier, orders for up to 500 contracts are eligible for AUTOM and orders for up to 25 contracts, in general, are eligible for AUTO-X.

The PHLX believes that the proposed expanded AUTO-X parameter should improve the AUTOM system by offering the benefits of AUTO-X, including prompt and efficient automatic executions at the displayed price, to additional customer orders. The Exchange states that the proposed AUTO-X increase from a maximum of 25 to 50 contracts is in line with prior changes. For example, the PHLX notes that the Commission previously has approved other PHLX proposals to increase the maximum AUTO-X contract size limit.[7]

Further, the Exchange believes that it is appropriate to permit automatic executions of option orders up to 50 contracts for several reasons. First, the PHLX states that AUTO-X affords each order the opportunity for price improvement, such that the price discovery mechanism is not impaired. Specifically, AUTO-X orders, although immediately reported with the best bid/offer as the execution price, may be subject to price improvement by the specialist, if a better bid/offer is

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[17] 17 CFR 200.30–3(a)(12) (1994).

[1] For USTOP 100 Index (''TPX'') options, public customer market and marketable limit orders for up to 50 contracts are eligible for AUTO-X. *See* Securities Exchange Act Release No. 35781 (May 30, 1995), 60 FR 30131 (June 7, 1995) (File No. SR–PHLX–95–29).

[2] *See* PHLX Rule 1033(a), ''Size of Bid/Offer and 10-up Guarantee.''

[3] *See* Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR–PHLX–94–41). *See also* Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1933), 53 FR 35563 (order approving File No. SR–PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR–PHLX–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR–PHLX–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR–PHLX–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR–PHLX–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR–PHLX–90–34, extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR–PHLX–91–31, permitting AUTO-X orders up to 20 contracts in Duracell options only); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR–PHLX–91–33, increasing size of AUTO-X orders from 10 contracts to 20 contracts); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR–PHLX–92–38, permitting AUTO-X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR–PHLX–93–57, extending pilot through December 31, 1994).

[4] Orders for up to 500 contracts are eligible for AUTOM and public customer orders for up to 25 contracts, in general, are eligible for AUTO-X. *See* Secuirities Exchange Act Release Nos. 35782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (order approving File No. SR–PHLX–95–30); and 32000 (March 15, 1993), 58 FR 15168 (March 19, 1994) (order approving File No. SR–PHLX–92–38). As noted above, public customer orders for up to 50 contracts in TPX options are eligible for AUTO-X. *See* Securities Exchange Act Release No. 35781, *supra* note 1.

[5] *See* Securities Exchange Act Release No. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990) (order approving File No. SR–PHLX–89–03).

[6] *See* Securities Exchange Act Release No. 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991) (order approving File No. SR–PHLX–90–34).

[7] *See* Securities Exchange Act Release No. 29837, *supra* note 3.

available. For example, a superior Registered Options Trader (''ROT'') bid/offer established immediately prior to the receipt of an AUTO-X order may not be disseminated in time to be matched with such order electronically, but the superior bid/offer is matched with the AUTO-X order through the trade adjustment function of the system. In view of this opportunity for price improvement by manual specialist intervention, the Exchange believes that permitting the automatic execution of 26 to 50 lots does not raise pricing concerns.

Second, according to the PHLX, there are many safeguards incorporated into Exchange rules and policies to ensure the appropriate handling of AUTO-X orders. Although AUTO-X orders are by definition executed automatically at the disseminated quotation, there are procedures in place in the event that the quotes are not accurate. The PHLX states that these safeguards protect customer orders in the event quotations are not up-to-date, not disseminating, or otherwise malfunctioning. At the same time, specialists and (ROTs) are also protected from incorrect executions. For example, in extraordinary (fast) market conditions, quotations are disseminated with an ''F'' once the 10-up guarantee on screen markets is suspended pursuant to Option Floor Procedure Advise (''Advice'') F–10, ''Extraordinary Market Conditions (Fast Markets).'' [8] In addition, Advice A–113, ''Auto Execution Engagement/Disengagement Responsibility,'' allows a specialist to disengage AUTO-X in extraordinary circumstances, upon approval by two floor officials. PHLX believes that these provisions serve to protect the integrity of AUTO-X by preventing inaccurate executions.

Third, the Exchange notes that specialists have the flexibility to establish the AUTO-X guarantee size for each option up to the maximum permissible size. In addition, the Exchange's ''Wheel'' for electronically assigning AUTO-X participation (although not yet operational) is voluntary for ROTS and will provide executions in 10–lot increments.[9] Thus, the PHLX believes that increasing the maximum AUTO-X order size up to 50 contracts does not raise financial viability concerns because ROTs can choose whether to participate on the Wheel and because the Wheel assigns order in 10-lot increments. With respect to the financial integrity of PHLX specialists and ROTs, the Exchange notes that it monitors compliance with PHLX Rules 703, ''Financial Responsibility and Reporting,'' and 722, ''Margin Accounts,'' on a regular basis.

The Exchange states that the proposed expansion of the AUTO-X maximum order size should not impose significant burdens on the operation and capacity of the AUTOM system. Instead, the PHLX believes that the proposal may enhance AUTOM's effectiveness by increasing the number of orders eligible for automatic execution, thereby reducing manual processing.

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest, by extending the benefits of AUTO-X to a larger number of customer orders.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 17, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23759 Filed 9–25–95; 8:45 am]

BILLING CODE 8010–01–M

[8] Under Advice F–10, when a fast market is in effect, displayed options quotes are not firm and the 10-up guarantee is not applicable, although specialists and trading crowds are required to use best efforts to update quotes and fill incoming orders in accordance with the 10-up rule.

[9] The Wheel is an automated mechanism for assigning specialists and ROTs, on a rotating basis, as contra-side participants for AUTO-X orders. Specialists must participate on the Wheel and ROTs may participate on the Wheel in assigned issues. On the Wheel, the specialist receives the first assignment of trades for the day in each respective option. Thereafter, the Wheel assigns trades to ROTs in an order standardized for that day on a random basis. Each 10 lot or order (whichever is smaller) constitutes an assignment. *See* Securities Exchange Act Release No. 35033 (November 30, 1994), 59 FR 63152 (December 7, 1994) (order approving File No. SR–PHLX–94–32).

[10] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–26253; International Series Release No. 856; File No. SR–CBOE–95–41]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Warrants on the Japanese Export Stock Index

September 19, 1995.

I. Introduction

On August 7, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to list and trade warrants on the Japanese Export Stock Index (''Japan Export Index'' or ''Index'').

Notice of the proposal was published for comment and appeared in the Federal Register on August 28, 1995.[3] On September 14, 1995, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On September 15, 1995, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On September 19, 1995, the Exchange file Amendment No. 3 to the proposed rule change.[6] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal, as amended, on an accelerated basis.

II. Description of the Proposal

The Exchange represents that it is permitted to list and trade index warrants under CBOE Rule 31.5E. The Exchange is now proposing to list and trade index warrants based upon the Japan Export Index.

A. Composition of the Index

The Japan Export Index was designed by CBOE. The CBOE represents that Index component stocks were selected for their high market capitalizations, and their high degree of liquidity, and are representative of the relative distribution of companies within Japanese export industries. The Index is composed of 40 of the largest Japanese export companies, as measured by yen-denominated export revenue, listed on the Tokyo Stock Exchange (''TSE'').

Business sector representation in the Index as of June 30, 1995, was as follows: (1) Autos and auto parts (25%) (10 issues); (2) Electric Machinery—diversified (22.5%) (9 issues); (3) Consumer Electronics (20%) (8 issues); (4) Iron and Steel (7.50%) (3 issues); (5) Precision instruments (7.5%) (3 issues); (6) Shipbuilding (5%) (2 issues); (7) Chemical (5%) (2 issues); (8) Machinery (2.5%) (1 issue); (9) Computers and semiconductors (2.5%) (1 issue); and (10) Services (2.5% (1 issue).

As of June 30, 1995, the CBOE represents that the 40 stocks contained in the Index range in market capitalization from $1.59 billion to $74.76 billion. The median capitalization of the component securities in the Index was $7.6 billion. Total market capitalization for the Index was approximately $451 billion.[7] In addition, the average daily trading volume of the stocks in the Index, for the six-month period ending June 30, 1995, ranged from a high of 6,640,000 shares to a low of 102,220 shares, with a mean and median of approximately 1,440,000 and 844,000 shares, respectively.

B. Calculation and Dissemination of the Index Value

The Japan Export Index is an ''equal dollar weighted'' broad-based index comprising 40 of the largest Japanese export companies, and measured by total yen-denominated export revenue, listed on the TSE.[8] The Index is calculated using an ''equal dollar weighting'' methodology designed to ensure that each of the component securities is represented in an approximately ''equal'' dollar amount in the Index at each rebalancing. The Index value was set equal to 100 on March 31, 1984. As of September 13, 1995 the value of the Index was 206.56.[9] In the event that a security does not trade on a given day, the previous day's last sale price is used for purposes of calculating the Index. In the event that a given security has not traded for more than one day, then the last sale price on the last day on which the security was traded will be used.

Because trading does not occur on the TSE during the CBOE's trading hours, the daily dissemination of the Index value is calculated by the CBOE once each day based on the just recent official closing price of each Index component security as reported by the TSE. This closing value is disseminated prior to the opening of trading in the U.S. via Options Price Reporting Authority. These values are also expected to be carried by the major quote vendors such as Quotron, ADP, ILX and Bloomberg, and thereby will be accessible to investors throughout the trading day.[10]

C. Maintenance of the Index

The Index is maintained by the CBOE. The Index will be rebalanced on the last trading day of the calendar year such that the components again represent an equal percentage (2.5%) of the Index. The Exchange staff will periodically review the Index to ensure that it continues to encompass a broad cross-section of Japanese export industries. The components of the Index will remain unchanged unless it becomes necessary to maintain the continuity of the Index by removing a component security due to a merger, takeover, or some other event where the issuer of the component security is not the surviving entity. If a component security is removed, the CBOE will attempt to find a replacement security taking into account liquidity of the replacement security, industry grouping, capitalization and the amount of the company's export revenue. The Exchange represents that the Index will not be permitted to fall below 35 component stocks.[11] Additionally, the Exchange represents that it will monitor the weighings of the components of the Index and if at any time the top 5 stocks account for more than 33⅓% of the total weight of the Index, the Exchange will re-balance the Index within the next thirty calendar days.[12] To ensure continuity in the Index's value, the index divisor will be adjusted to reflect, among other things, certain rights

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 36128 (August 21, 1995), 60 FR 44529 (''Release No. 36128'').

[4] *See* Letter from Joe Levin, Vice President, Research Department, CBOE, to John Ayanian, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated September 14, 1995 (''Amendment No. 1''). In Amendment No. 1, the CBOE represents that the Japan Export Index value was set equal to 100 on March 31, 1984, the base date. As of September 13, 1995 the value of the Index was 206.56. Additionally, the CBOE represents that the Index will be re-balanced annually as of the last trading day of last trading day of the calendar year, and not at the time of the initial issuance of the warrants. The CBOE further proposes that the initial offering price for the warrants will be based on an index around the time of issuance.

[5] *See* Letter from Eileen Smith, Director, Research & Product Development, CBOE, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated September 19, 1995 (''Amendment No. 2''). In Amendment No. 2 the CBOE outlines several additional procedures regarding Index calculation, dissemination, and maintenance.

[6] *See* Letter from Eileen Smith, Director, Research & Product Development, CBOE, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated September 19, 1995 (''Amendment No. 3''). Amendment No. 3 to CBOE's proposal states that the CBOE will monitor the weighings of the components of the Japan Export Index and if at any time the top 5 stocks account for more than 33⅓% of the total wright of the Index, CBOE will re-balance the Index within the next thirty calendar days.

[7] Based on the exchange rate of 85 yen/US$ 1 prevailing on June 30, 1995.

[8] The components of the Index are as follows: Aiwa; Bridgestone Corp.; Canon; Casio Computer; Citizen Watch; Fuji Heavy Inds.; Fuji Photo Film; Hitachi; Honda Motor; Isuzu Motor; Kawasaki Heavy Ind.; Kawasaki Steel; Komatsu Ltd.; Konica Corp.; Kyocera Corp.; Kyushu Matsushita; Matsu-Kotob Eltr.; Matsushita Elect I; Mazda Motor; Mitsubishi Heavy; Mitsubishi Motors; NEC; Nikon Corp.; Nintendo; Nippon Steel; Nissan Motor; OKI Electric Ind.; Pioneer Eltr.; Ricoh Co. Ltd.; Sanyo Electric; Sega Enterprises; Sharp Corp.; Sony; Sumitomo Mtl. Ind.; Suzuki Motor; TDK Corporation; Toshiba; Toyota Motor; Victor Co. of Japan; and Yamaha Motor.

[9] *See* Amendment No. 1, *Supra* note 4. The initial offering price for the warrants will be based on an index level as of the date and time of issuance.

[10] *See* Amendment No. 2, *supra* note 5.

[11] *Id.*

[12] *See* Amendment No. 3, *supra* note 6.

issuances, stock splits, rebalancing, and component security changes.

D. Index Warrant Trading

The proposed warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (i.e., American-style) or exercisable only immediately prior to their expiration date (i.e., European-style). Upon exercise, the holder of a warrant structured as a ''put'' would receive payment in U.S. dollars to the extent that the index value has declined below a pre-stated cash settlement value. Conversely, upon exercise, the holder of a warrant structured as a ''call'' would receive payment in U.S. dollars to the extent that the index value has increased above the pre-stated cash settlement value. Warrants that are ''out-or-the-money'' at the time of expiration will expire worthless.

E. Warrant Listing Standards and Customer Safeguards

The Exchange has established uniform listing and trading guidelines for index warrants (''Generic Warrant Listing Standards'').[13] The Exchange represents that the Generic Warrant Listing Standards will be applicable to the listing and trading of index warrants generally, including Japan Export Index warrants. These standards will govern all aspects of the listing and trading of index warrants, including, issuer eligibility,[14] position and exercise limits,[15] reportable positions,[16] automatic exercise,[17] settlement,[18] margin,[19] and trading halts and suspensions.[20]

Additionally, these warrants will be sold only to accounts approved for the trading of standardized options[21] and, the Exchange's options suitability standards will apply to recommendations in Index warrants.[22] The Exchange's rules regarding discretionary orders will also apply to transactions in Index warrants.[23] Finally, prior to the commencement of trading, the Exchange will distribute a circular to its membership calling attention to certain compliance responsibilities when handling transactions in the Japan Export Index warrants.[24]

F. Surveillance

The Exchange will apply its existing index warrant surveillance procedures to Japan Export Index warrants. The Exchange has a market surveillance agreement with the TSE which was obtained in connection with CBOE trading of options of the Nikkei 300 Index (''Nikkei 300''). Approximately 73% (29) of the stocks in the Index are also components of the Nikkei 300 Index. The Exchange notes that the TSE is under the regulatory oversight of the Ministry of Finance (''MOF'') and believes that the ongoing oversight of all securities trading activity on the TSE by the MOF will help to ensure that trading of the component securities included in the Japan Export Index will be appropriately monitored. Finally, the Exchange believes that the Memorandum of Understanding (''MOU'') between the Commission and the MOF will provide a framework for mutual assistance in investigatory and regulatory matters.

III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[25] Specifically, the Commission finds that the trading of warrants based on the Japan Export Index will serve to protect investors, promote the public interest, and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with securities in Japanese export industries and provide a surrogate instrument for trading in the Japanese securities market.[26] The trading of warrants based on the Japan Export Index should provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of securities in Japanese export industries.

In addition, the Commission believes, for the reasons discussed below, that the CBOE has adequately addressed issues related to customer protection, index design, surveillance, and market impact of Japan Export Index warrants.

A. Customer Protection

Special customer protection concerns are presented by Japanese Export Index warrants because they are leveraged derivative securities. The CBOE has addressed these concerns, however, by imposing the special suitability, account approval, disclosure, and compliance requirements, as discussed above.[27] Moreover, the CBOE plans to distribute a circular to their members identifying the specific risks associated with warrants on the Japan Export Index. Finally, pursuant to the Exchange's listing guidelines, only substantial companies capable of meeting CBOE index warrant issuer standards will be eligible to issue Japan Export Index warrants.

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[13] *See* Securities Exchange Act Release No. 36169 (August 29, 1995), 60 FR 46644 (September 7, 1995) (''Generic Warrant Approval Order'').

[14] *See* CBOE Rule 31.5E(1) and (4). Issuers are required to have a minimum tangible net worth in excess of $250 million or, in the alternative, have a minimum tangible net worth in excess of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued and outstanding warrants where the aggregate original issue price of all such warrant offerings (combined with offerings by its affiliates) listed on a national securities exchange or that are National Market securities traded through NASDAQ exceeds 25% of the issuer's net worth.

[15] *See* CBOE Rule 30.35. In particular, under CBOE Rule 30.35, no member can control an aggregate position in a stock index warrant issue, or in all warrants issued on the same stock index, on the same side of the market, in excess of 15,000,000 warrants (12,500,000 warrants with respect to warrants on the Russell 2000 Index) with an original issue price of ten dollars or less. Stock index warrants with an original issue price greater than ten dollars will be weighted more heavily in calculating position limits.

CBOE Rule 30.35 also establishes exercise limits on stock index warrants which are analagous to those found in stock index options. The rule prohibits holders from exercising, within any five consecutive business days, long positions in warrants in excess of the base position limit set forth above.

[16] *See* CBOE Rules 30.50(d) and 4.13.

[17] *See* CBOE Rule 31.5E(6).

[18] *See* CBOE Rule 31.5E(5).

[19] *See* CBOE Rule 30.53. In general, the margin requirements for long and short positions in stock index warrants are the same as margin requirements for long and short positions in stock index options. Accordingly, all purchases of warrants will require payment in full, and short sales of stock index warrants will require initial margin of: (i) 100 percent of the current value of the warrant plus (ii) 15 percent of the current value of the underlying broad stock index less the amount by which the warrant is out of the money, but with a minimum of ten percent of the index value.

[20] *See* CBOE Rules 30.36 and 24.7.

[21] *See* CBOE Rules 30.52(c) and 9.7.

[22] *See* CBOE Rules 30.52(d) and 9.9.

[23] *See* CBOE Rule 30.50, Interpretation .03 (requiring that the standards of Rule 9.10 be applied to index warrant transactions).

[24] Telephone conversation between Eileen Smith, Director, Research & Product Development, CBOE, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on August 17, 1995.

[25] 15 U.S.C. 78f(b)(5).

[26] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[27] *See* Generic Warrant Approval Order, *supra* note 6.

B. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act for the CBOE to designate the Index as a broad-based index. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the Japanese equity market. First, the Index consists of 40 actively traded stocks listed on the TSE, representing 10 different industry groups in Japan. Second, the market capitalization of the stocks comprising the Index are very large. Specifically, the total capitalization of the Index, as of June 30, 1995, was approximately U.S. $455 billion, with the market capitalization of the individual stocks in the Index ranging from a high of $74.76 billion to a low of $1.59 billion, with a mean value of $11 billion.[28] Third, no one particular stock or group of stocks dominates the weight of the Index. Specifically, as of September 13, 1995, no single stock accounted for more than 4.14% of the Index's total value, and the percentage weighting of the five largest issues in the Index accounted for 16.98% of the Index's value. Additionally, the lowest weighted stock in the Index accounted for 1.98% of the Index's value.[29] Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.

C. Surveillance

As a general matter, the Commission believes that comprehensive surveillance sharing agreements between the relevant foreign and domestic exchanges are important where an index derivative product based on foreign securities is to be traded in the United States.[30] In most cases, in the absence of such a comprehensive surveillance sharing agreement, the Commission believes that it would not be possible to conclude that a derivative product, such as the Japan Export Index warrant, was not readily susceptible to manipulation.

Although the CBOE and the TSE do not yet have a written comprehensive surveillance sharing agreement that covers the trading of Japan Export Index warrants, a number of factors support approval of the proposal at this time. First, while the size of an underlying market is not determinative of whether a particular derivative product based on that market is readily susceptible to manipulation, the size of the market for the securities underlying the Japan Export Index makes it less likely that the proposed Index warrants are readily susceptible to manipulation.[31] In addition, the Commission notes that the TSE is under the regulatory oversight of the MOF. The MOF has responsibility for both the Japanese securities and derivatives markets. Accordingly, the Commission believes that the ongoing oversight of the trading activities on the TSE by the MOF will help to ensure that the trading of the underlying components of the Japan Export Index warrants will be carefully monitored with a view toward preventing unnecessary market disruptions.

Finally, as noted above, the Commission and the MOF have concluded a Memorandum of Understanding that provides a framework for mutual assistance in investigatory and regulatory matters.[32] Moreover, the Commission also has a longstanding working relationship with the MOF on these matters. Based on the longstanding relationship between the Commission and the MOF and the existence of the MOU, the Commission is confident that it and the MOF could acquire information from one another similar to that which would be available in the event that a comprehensive surveillance sharing agreement were executed between the CBOE and the TSE with respect to transactions in TSE-traded stocks related to Japan Export Index warrant transactions on the CBOE.[33]

Nevertheless, the Commission continues to believe strongly that a comprehensive surveillance sharing agreement between the TSE and the CBOE covering Japan Export Index warrants would be an important measure to deter and detect potential manipulations or other improper or illegal trading involving Japan Export Index warrants. Accordingly, the Commission believes it is critical that the TSE and the CBOE continue to work together to consummate a formal comprehensive surveillance sharing agreement to cover Japan Export Index warrants and the component securities as soon as practicable.

D. Market Impact

The Commission believes that the listing and trading of Japan Export Index warrants on the CBOE will not adversely impact the securities markets in the United States or in Japan. First, the existing index warrants surveillance procedures of the CBOE will apply to warrants on the Index. In addition, the Commission notes that the Index is broad-based and diversified and includes highly capitalized securities that are actively traded on the TSE. Additionally, the CBOE has established reasonable positions and exercise limits for stock index warrants, which will serve to minimize potential manipulation and other market impact concerns.

The Commission finds good cause for approving the proposed rule change, including Amendment Nos. 1, 2, and 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission notes that Japan Export Index warrants will be listed pursuant to the Generic Warrant Listing Standards as described above. Additionally, the Index's applicable ''equal dollar weighting'' methodology is a commonly applied index calculation method. Moreover, the Japan Export Index is a broad-based Index designed to represent a substantial segment of the Japanese equity market and accordingly is similar in design as other Japanese stock market based options and/or warrants that have been approved by the Commission for U.S. exchange trading.[34] Finally, no

[28] These figures are based on the Japanese yen values of as June 30, 1995, but converted to dollars using the current exchange rate of approximately JY 85/U.S. $1.00.

[29] *See* Letter from Eileen Smith, Director, Research & Product Development, CBOE, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated September 18, 1995. Upon each annual rebalancing of the Index, each component of the Index will account for no more than 2.5% of the Index (based on 40 stocks comprising the Index).

[30] A comprehensive surveillance sharing agreement would allow the parties to the agreement to obtain relevant surveillance information, including, among other things, the identity of the purchasers and sellers of securities.

[31] In evaluating the manipulative potential of a proposed index derivative product, as it relates to the securities that comprise the index and the index product itself, the Commission has considered several factors, including (1) The number of securities comprising the index or group; (2) the capitalizations of those securities; (3) the depth and liquidity of the group or index; (4) the diversification of the group or index; (5) the manner in which the index or group is weighted; and (6) the ability to conduct surveillance on the product. *See* Securities Exchange Act Release No. 31016 (August 11, 1992), 57 FR 37012 (August 17, 1992).

[32] *See* Memorandum of Understanding Between the United States Securities and Exchange Commission and the Securities Bureau of the Japan Ministry of Finance on the Sharing of Information, dated May 23, 1986.

[33] It is the Commission's expectation that this information would include transaction, clearing, and customer information necessary to conduct an investigation.

[34] *See* Securities Exchange Act Release Nos. 34821 (October 11, 1994), 59 FR 52568; and 35184 (December 30, 1994), 60 FR 2616 (January 10, 1995) (Orders approving proposed rule change by the Amex and CBOE, respectively, to list and trade warrants based on the Nikkei 300 Index). *See also* Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376 (January 4, 1990) (Order approving proposed rule change by the Amex to list and trade warrants based on the Nikkei 225 Index). *See also* Securities Exchange Act Release Nos. 28475 (September 27, 1990), 55 FR

Continued

comments were received on the proposal, which was subject to the full 21 day notice and comment period.[35]

Amendment No. 1 to CBOE's proposal sets the Index value equal to 100 on March 31, 1984, rather than on the date of the first issuance of the warrants, as originally proposed. Accordingly, the Index was valued at 206.56, as of September 13, 1995, and the initial offering price for the warrants will be based on an index level around the time of issuance. The Commission notes the Index does not yet underlie any warrant trading, therefore the setting of a new starting value for the Index does not raise any new regulatory issues.

The CBOE also indicated in Amendment No. 1 that the Index will not be re-balanced at the time of initial issuance of the warrant, rather it will be re-balanced annually as of the last trading day of the calendar year as originally proposed. The Commission notes that the Index was re-balanced on the last trading day of 1994, and will again be re-balanced on the last trading day in 1995. Additionally, the Index will be re-balanced earlier when necessary as set forth below in CBOE Amendment No. 3.

Amendment No. 2 to CBOE's proposal describes more detailed maintenance procedures to be employed by the CBOE.[36] The Commission believes that the Exchange's periodic review of the underlying components of the Index for liquidity, capitalization and export revenue, and the replacement procedures for underlying components of the Index, as described above, will help ensure that the Index maintains its intended market character.

In Amendment No. 2, the CBOE further represents that the Index values are expected to be carried by the major quote vendors, and thereby will be accessible to investors throughout the trading day. The Commission believes that in light of CBOE's assurances that the Index value will be widely available to investors throughout the trading day, and because stock exchange trading in Japan and U.S. markets does not overlap, the described amendment relating to Index dissemination is appropriate.

Amendment No. 3 to CBOE's proposal states that the CBOE will monitor the weightings of the components of the Japan Export Index and if at any time the top 5 stocks account for more than 33⅓% of the total weight of the Index, CBOE will re-balance the Index within the next thirty calendar days. The Commission notes that Amendment No. 3 is more restrictive than the original proposal which was published for the full 21-day comment period without any comments being received by the Commission.[37] Additionally, the Commission believes that the Exchange's interim reblancing procedures will benefit investors and help ensure that the Index reflects its intended market character.

Accordingly, the Commission believes it is consistent with Section 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change, including Amendment Nos. 1, 2 and 3 to the proposed rule change, on an accelerated basis.

E. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–95–41 and should be submitted by October 17, 1995.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change (File No. SR–CBOE–95–41), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23758 Filed 9–25–95; 8:45 am]

BILLING CODE 8010–01–M

40492 (October 3, 1990); and 31016 (August 11, 1992), 57 FR 37012 (August 17, 1992) (Orders approving proposed rule change by the Amex to list and trade options and warrants, respectively, on the Japan Index).

[35] *See* Release No. 36128, *supra* note 3.

[36] *See* Amendment No. 2, *supra* note 5.

[37] The Commission believes that the CBOE's amended maintenance procedures are more restrictive in that the CBOE will re-balance the Index within 30 calendar days if at any time the top 5 stocks account for more than 33⅓% of the total weight of the Index. The proposal as originally filed only contemplated an annual rebalancing under all circumstances.

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2254]

United States International Telecommunications Advisory Committee (ITAC) Standardization Sector U.S. ITAC–T Study Group and ITAC Ad Hoc Committee—Rights & Obligations; Meeting Notice

The Department of State announces that the United States International telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector (ITAC–T) Study Group (formerly the USNC), the ITAC ad hoc Committee for Rights and Obligations and the ITAC–T Study Group C will meet on the following dates and times at the U.S. Department of State, 2201 C Street, NW., Washington, DC 20530:

ITAC–T National Study Group, October 18, 1995, 930–300, Room 1205

ITAC–T Study Group C, October 23, 1995, 130–500, Room 3524

ITAC Ad Hoc Committee for Rights and Obligations, November 28, 1995, 930–300, Room 1205

Detailed agendas will be provided prior to the meeting to the most recent attendees of the two U.S. ITAC Groups. The ITAC–T agenda will deal primarily with a debrief of the September meeting of the Telecommunications Standardization Advisory Group (TSAG) including any discussions relating to the joint RAG/TSAG refinement meeting (September 15 & 18) and initial preparations for the 1996 World Telecommunications Standardization Conference (WTSC–96) while the ITAC ad hoc committee for Rights and Obligations will finalize U.S. preparations for the upcoming Geneva December 11–15 meeting of the ITU Review Committee. The agenda for Study Group C will deal principally with documents discussed at the U.S. domestic meeting held prior to the SG C meeting, drafted as contributions and destined for the November meeting in Geneva of ITU–T Study Group 15.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public

members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you wish to attend please send a fax to 202–647–7407 not later than 5 days before the scheduled meetings. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: September 13, 1995.

Earl S. Barbely,

Chairman, U.S., ITAC for Telecommunication Standardization.

[FR Doc. 95–23847 Filed 9–25–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended September 15, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–635.
Date filed: September 11, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC1 Reso/P 0458 dated August 18, 1995. Areawide Resolutions r-1 to r-2. TC1 Reso/P 0459 dated August 18, 1995. Longhaul Resolutions r-3 to r-52. Minutes—TC1 Meet/P 0107 dated September 8, 1995. Tables—TC1 Fares 0108 dated September 8, 1995.
Proposed Effective Date: January 1, 1996.

Docket Number: OST–95–636.
Date filed: September 11, 1995.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Reso 033f—Hungary.
Proposed Effective Date: October 1, 1995.

Docket Number: OST–95–637.
Date filed: September 11, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC1 Reso/P 0460 dated August 18, 1995. Within South America resos r-1 to r-14. TABLES—TC1 Fares 0107 dated September 8, 1995.
Proposed Effective Date: January 1, 1996.

Paulette V. Twine, Chief,

Documentary Services Division.

[FR Doc. 95–23827 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 15, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–645.
Date filed: September 12, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 10, 1995.
Description: Application of Maverick Airways Corporation , pursuant to 49 U.S.C. 41102, and Subpart Q of the Regulations, for a certificate of public convenience and necessity authorizing scheduled air transportation.

Docket Number: OST–95–656.
Date filed: September 14, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 12, 1995.
Description: Application of USAir, Inc., pursuant to 49 U.S.C. Section 41101 and 41108, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of persons, property and mail between the coterminal points Boston, Massachusetts and Philadelphia, Pennsylvania, and the coterminal points Madrid, Barcelona, Malaga and Palma de Mallorca, Spain.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–23826 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Advisory Circular 21–2H, Export Airworthiness Approval Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular 21–2H, Export Airworthiness Approval Procedures. Advisory Circular 21–2H provides information and guidance concerning the export of aeronautical products and related special requirements submitted to the Federal Aviation Administration by foreign governments.

ADDRESS: Copy of AC 21–2H can be obtained from the following: Department of Transportation, Utilization and Storage Section, M443.2, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on September 21, 1995.

Michael Gallagher,

Manager, Production and Airworthiness Certification Division.

[FR Doc. 95–23829 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–13–M

Meeting

Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held October 17, 1995, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, tenth floor, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591, telephone 202–267–7451.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held October 17, 1995, in the MacCracken Room, tenth floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for the meeting will include reports on the Universal Access System, Rewrites of FAR 107 and 108, Contingency Measures, Container Hardening, Screener Proficiency Evaluation and Reporting System, Unescorted Access Privilege Rule. Attendance at the October 17, 1995, meeting is open to the public but is limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time. Persons wishing to present statements or obtain information should contact the Office of

the Associate Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone 202–267–7451.

Issued in Washington, D.C. on September 20, 1995.

Karl Shrum,

Acting Director of Civil Aviation Security, Policy and Planning.

[FR Doc. 95–23823 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc. Special Committee 184; Minimum Performance and Installation Standards for Runway Guard Lights

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 184 meeting to be held October 11–12, 1995, starting at 9:30 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Administrative Announcements; (2) Chairman's Introductory Remarks; (3) Review and Approval of Meeting Agenda; (4) Review and Approval of Minutes of the Previous Meeting; (5) Review Sections of Draft Document on Elevated Runway Guard Lights; (6) Review of Draft Document Input of In-Pavement Runway Guard Lights; (7) Work Group Drafting Session; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 20, 1995.

Janice Peters,

Designated Official.

[FR Doc. 95–23828 Filed 9–25–95; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc. Special Committee 147; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 147 meeting to be held October 12–13, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review of Meeting Agenda; (3) Review and Approval of Minutes of the Previous Meeting; (4) Report of Working Group Activities: a. Operations Working Group; b. Requirements Working Group; c. Enhancements Working Group; (5) Report on SC–186 Activities; (6) Report on FAA TCAS Program Activities: a. TCAS I; b. TCAS II; c. TCAS IV (Based on action item from the last meeting, this item is to include a briefing from the FAA on TCAS design concepts); d. ATC Applications Activities; (7) Review and Update of Verification and Validation Process; (8) Review of Action Items from Last Meeting: a. General Review of Proposed Changes to DO–181A (Full Committee Discussion and Approval of Changes); b. FAA Briefing on Certification Requirements for DO–185A; c. Report on Number of Aircraft Not Equipped with Syncro or Digital Altitude Output; d. Response to ALPA Concern Regarding New TCAS Parameters for Operations above FL 290; (9) Other Business; (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 20, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–23825 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Red Bluff, California; Notice of Closure

Notice is hereby given that on September 28, 1995, the Flight Service Station at Red Bluff, California will close. Services to the general aviation public of Red Bluff, formerly provided by this facility, will be provided by the Automated Flight Service Station (AFSS) in Rancho Murieta, California. This information will be reflected in the next issue of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752, 49 U.S.C. 1354)

Issued in Lawndale, California, on September 18, 1995.

Nina D. Adams,

Acting Regional Administrator, Western-Pacific Region.

[FR Doc. 95–23824 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Docket No. 95–60; Notice 2

Decision That Nonconforming 1994 and 1995 BMW 730i Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1994 and 1995 BMW 730i passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1994 and 1995 BMW 730i passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the 1994 and 1995 BMW 740i), and they are capable of being readily altered to conform to the standards.

DATES: The decision is effective as of September 26, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being

readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1994 and 1995 BMW 730i passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on August 2, 1995 (60 FR 39482) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–131 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1994 and 1995 BMW 730i passenger cars are substantially similar to 1994 and 1995 BMW 740i passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 21, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–23860 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–64; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 26, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal Motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

G&K Automotive Conversion, Inc. of Santa Ana, California (''G&K'') (Registered Importer 90–007) has petitioned NHTSA to decide whether 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 (Model ID 129.067) passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that non-U.S. certified 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,*

202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies and front sidmarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidmarkers; (c) installation of a high mounted stop lamp.

Stnadard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. The petitioner states that the vehicles are equipped with Type 2 seat belts in both seating positions. The petitioner also states that the vehicles manufactured after September 9, 1993 are equipped with driver's and passenger's side air bags and knee bolsters, and that those manufactured before that date may be equipped with only a driver's side air bag and knee bolster and a Type 2 seat belt on the passenger's side.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on non-U.S. certified 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 passenger cars must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581. Petitioner also states that the vehicles' VINs will be inscribed on 14 major car parts and a theft prevention certification label will be installed on the vehicles before they are imported into the United States to comply with the Theft Prevention Standard found in 49 CFR Part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 21, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–23862 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–59; Notice 2]

Decision That Nonconforming 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of September 26, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1993 Mercedes-Benz

600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on August 2, 1995 (60 FR 39484 to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–130 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 (Model ID 129.076) passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 21, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–23861 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–58; Notice 2]

Decision that Nonconforming 1980 Sprite Musketeer Trailers are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1980 Sprite Musketeer trailers are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1980 Sprite Musketeer trailers not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The decision is effective as of September 26, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.- certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Northern California Diagnostic Laboratories, Inc. of Napa, California (Registered Importer No. R–92–011) petitioned NHTSA to decide whether 1980 Sprite Musketeer trailers are eligible for importation into the United States. NHTSA published notice of the petition on August 4, 1995 (60 FR 39987) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP–12 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1980 Sprite Musketeer trailers are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 21, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–23859 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–78; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1990 Mercedes-Benz 560SEC Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990 Mercedes-Benz 560SEC passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1990 Mercedes-Benz 560SEC that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that

was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 26, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5406).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne '') (Registered Importer 90–007) has petitioned NHTSA to decide whether 1990 Mercedes-Benz 560SEC (Model ID 126.045) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1990 Mercedes-Benz 560SEC that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1990 Mercedes-Benz 560SEC to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1990 Mercedes-Benz 560SEC, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1990 Mercedes-Benz 560SEC is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 202 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1990 Mercedes-Benz 560SEC complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model head lamp assemblies which incorporate sealed beam headlamps (b) installation of U.S.-model front and rear sidemarkers/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high-mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt buckle; (b) installation of an ignition switch-actuated set belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components. The petitioner states that the vehicle is equipped in the front seating positions with combination lap and should belts which adjust by means of an automatic retractor and release by means of a single push button. Additionally, the petitioner states that the vehicle is equipped in the rear outboard seating positions with combination lap and shoulder belts that release by means of a single push button.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date

indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 21, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–23858 Filed 9–25–95; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 186
Tuesday, September 26, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, September 28, 1995.

PLACE: Room 600, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *In Re: Contests of Respirable Dust Sample Alteration Citations,* and *Keystone Coal Mining Corp.,* Master Docket No. 91–1 and Docket Nos. PENN 91–451–R, etc. (issues include whether the judge erred in his framing of the Secretary's burden of proof and in finding that the Secretary failed to carry his burden of proving that the weight of 75 cited filters from the Urling No. 1 Mine was intentionally altered by Keystone Coal Mining Corp.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/for toll free TDD Relay 1–800–877–8339.

Dated: September 21, 1995.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–24020 Filed 9–22–95; 8:45 am]

BILLING CODE 6735–01–M

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Notice of Meeting

The Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation will hold a meeting beginning at 10:00 a.m. on Friday, October 12, 1995, at the University of Arizona Swede Johnson Foundation Building, 1111 North Cherry, Tucson, Arizona 85721.

The matters to be considered will include (1) Approval of the annual budget; (2) Policies re investments; (3) Reports of on-going Foundation programs; and (4) A report from the Udall Center for Studies and Public Policy. The meeting is open to the public.

CONTACT PERSON FOR MORE INFORMATION: Christopher L. Helms, 803/811 East First Street, Tucson, AZ 85719. Telephone: (520) 670–5523.

Dated this 21st day of September, 1995.

Christopher L. Helms,

Director.

[FR Doc. 95–23983 Filed 9–22–95; 3:28 am]

BILLING CODE 9630–11–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, October 3, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6606—Railroad Accident Report: Rear-End Collision of Atchison, Topeka and Santa Fe Railway Freight Train with Union Pacific Railroad Freight Train, Cajon Pass, CA, December 14, 1994.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: September 22, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–24009 Filed 9–22–95; 3:28 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 25, October 2, 9, and 16, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of September 25

There are no meetings scheduled for the week of September 25.

Week of October 2—Tentative

Tuesday, October 3

10:00 a.m.

Briefing by National Academy of Sciences (NAS) on Recommendations for Technical Bases of Yucca Mountain Standards (Public Meeting)
(Contact: Lisa Clendening, 202–334–3066)

Week of October 9—Tentative

Tuesday, October 10

10:00 a.m.

Briefing on NRC's Technical Training Program (Public Meeting)
(Contact: Ken Raglin, 615–855–6500)

Week of October 16—Tentative

There are no meetings scheduled for the week of October 16.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: September 21, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–23935 Filed 9–22–95; 11:16 am]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, October 3, 1995, in Washington, D.C. The meeting is open to the public and will be held at the U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the

meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, October 2, 1995, but it will consist entirely of briefings and is not open to the public.

AGENDA

Tuesday Session

October 2–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, September 11–12, 1995
2. Remarks of the Postmaster General and CEO. (Marvin Runyon)
3. Board of Governors 1996 Meeting Schedule. (Chairman Sam Winters)
4. Office of the Governors FY 1996 Budget. (Chairman Sam Winters)
5. Consideration of Contract for Outside Audit Services. (Governor del Junco)
6. Review of the Five-Year Capital Investment Program. (Michael J. Riley, Chief Financial Officer and Senior Vice President, Finance)
7. Fiscal Year 1996 Financing Plan. (Mr. Riley)
8. Capital Investments
   a. 104 Additional Remote Bar Coding Systems [final consideration]. (William J. Dowling, Vice President, Engineering)
   b. Seattle, Washington, P&DC/DDC & Everett, WA, Carrier Annex and Modification to Seattle, WA, Area Plan [info. briefing]. (Craig G. Wade, Vice President, Western Area Operations)
9. Tentative Agenda for the November 6–7, 1995, meeting in Washington, D.C.

David F. Harris.

Secretary.

[FR Doc. 95–24010 Filed 9–22–95; 3:28 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 25, 1995.

An open meeting will be held on Wednesday, September 27, 1995, at 10:00 a.m.

A closed meeting will be held on Thursday, September 28, 1995, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, September 27, 1995, at 10:00 a.m., will be:

The Commission will consider whether to issue a release proposing: (1) amendments to the Quote Rule expanding the existing broker-dealer quotation requirements and requiring brokers and dealers to reflect orders entered into certain electronic communications systems in their quotations; (2) a new rule requiring display of customer limit orders and the size associated with such orders in the circumstances specified in the rule; and (3) a new rule requiring specialists and market makers to provide customer market orders an opportunity for price improvement before execution; and setting forth safe harbor procedures that would be deemed to satisfy the price improvement requirement.

For information, contact David Oestreicher, Gautam Gujral, Gail Marshall or Elizabeth Prout Lefler, (202) 942–0158.

The subject matters of the closed meeting scheduled for Thursday, September 28, 1995, at 10:00 a.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: September 21, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–23907 Filed 9–21–95; 4:44 pm]

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Tuesday
September 26, 1995

Part II

Department of Commerce

Economic Development Administration

13 CFR Chapter III

Simplification and Streamlining of Regulations of the Economic Development Administration; Final Rules

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Chapter III

[Docket No. 950525142–5142–01]

RIN 0610–AA47

Simplification and Streamlining of Regulations of the Economic Development Administration

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The purpose of this interim-final rule is to revise all of the regulations of the Economic Development Administration (EDA) so that they are easy to read and use, and accurately reflect program requirements, evaluation criteria and selection processes in implementing programs under the Public Works and Economic Development Act of 1965, as amended, (PWEDA or the Act) the Trade Act of 1974, as amended (the Trade Act) and other statutes to be noted herein. This streamlining effort includes the removal of numerous unnecessary, redundant and outdated parts, sections and portions thereof.

DATES: This rule is effective on October 1, 1995. Submit comments by November 27, 1995.

ADDRESSES: Send comments to Awilda R. Marquez, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Room 7001A, Washington, DC. 20230.

FOR FURTHER INFORMATION CONTACT: Awilda R. Marquez, 202–482–4687, fax number: 202–482–5671.

SUPPLEMENTARY INFORMATION:

Background

- In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reform Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake an exhaustive review of all their regulations—with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. This final rule represents one of the first steps in EDA's response to this new directive.
- EDA's regulations have been criticized by Congress, applicants, recipients, and others as being too long, burdensome, complex and difficult to understand. This interim final rule addresses these problems as described in the Changes section.
- Public comments were solicited and received during three representative regional meetings of applicants and recipients of EDA financial assistance held in Philadelphia, Pennsylvania, in February 1995, in Chicago, Illinois, in March 1995, and in Monterey, California, in April 1995. Comments from these groups were about the complexity and length of time and repetitive nature of grant processing. These streamlined regulations address these concerns because they are less complex and set forth program descriptions, evaluation criteria and processing procedures in an easy to read and straightforward manner.
- All employees of EDA were invited to participate in this process, and many did.

Description of Major Changes

This interim-final rule removes, streamlines, and redesignates parts, sections and portions thereof. Significant changes are described below.

Removals

- Certain removals are made because the programs to which these regulations apply are no longer in existence, such as Part 313—Job Opportunities Program; Part 314—Property Management—Subpart C—Excess Property; Part 316—Local Public Works Capital Development and Investment Program; and Part 317—Round II of the Local Public Works Capital Development and Investment Program.
- Other removals are made because policy rules not required by PWEDA have become unnecessarily constraining or outdated, such as Part 305—Public Works and Development Facilities Program in Subpart C—Specific types of projects: § 305.43(a) (2), (3), (4) and (b) (2), (3), (5) Industrial parks and sites, § 305.44 Tourism and recreation, § 305.45 Skill training center facilities; and in Subpart D—Limitations: § 305.54 Employment of local labor and § 305.59 Energy conservation and other requirements.
- Removals were also made because provisions repeated requirements in PWEDA, Pub. L. 89–136; 42 U.S.C. 3121 et seq., the Trade Act, Pub. L. 93–618, 19 U.S.C. 2101 et seq., or other statutes, or regulations, GAO opinions, Executive Orders or OMB Circulars which apply to EDA's programs. In these instances, of course, the statutory and other legal requirements are still in effect. Unless otherwise stated, PWEDA is the basic underlying statutory authority incorporated into and relied upon in 13 CFR Chapter III.

Streamlining

- In Part 304, streamlined selection processing procedures and uniform general evaluation criteria for EDA projects funded under PWEDA are set forth.

This part condenses and clarifies policies and criteria previously published in annual funding notices which are being codified in this interim-final rule.

- Section 316.3 on excess capacity has been changed to describe three categories under section 702 of PWEDA (702 studies/reports) determinations: studies, reports or exemptions. The exemptions have been expanded. Market studies from applicants are to be submitted to EDA early in application processing to be used if possible as the basis for 702 studies or reports. This will save time in making the 702 studies/reports.
- The nonrelocation prohibition in § 316.4 will only apply before a grant is awarded, and categorical exclusions from the nonrelocation requirements have been expanded. This removes a post-approval burden on recipients.
- In § 316.5 on electric and gas energy, requirements have been combined to the extent that exceptions to the statutory prohibition are identical, and additional exceptions have been added for electrical energy.
- In part 305, sections describing particular types of projects are removed and in their place are generalized programmatic requirements which are applicable to all Title I projects. The project specific requirements were policy driven and overly burdensome. The new requirements are easier to understand and to apply.
- Part 307 on Technical Assistance, Research and Planning has been changed to reflect program requirements, evaluation criteria and selection procedures for the five programs implemented by EDA under Title III of the Act: Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation, State and Urban Planning and District Planning, to replace confusing and often burdensome regulations.
- Part 308 on Requirements for Grants under the Title IX Economic Adjustment Program has been modified to incorporate program requirements and procedures described in EDA's annual Notice of Funding Availability

and now more accurately describes the types of projects typically funded under the broad authority of Title IX. For Presidentially-declared disasters, area eligibility criteria findings would be waived.

• Part 314 on Property Management Standards has been changed as follows:

• To specify the nature of a grantee's trustee interest in project property and EDA's retained reversionary interest.

• To cover personal property, including revolving loan funds, as well as real property.

• To cover the form and evidence of title required for real property under a project.

• To clarify the determination of the Federal share of property for which the Federal Government is to be compensated in case of misuse or disposition of project property during a project's estimated useful life.

• To clarify and simplify the procedure for allowing encumbrances of project property.

• To specify that EDA may approve a substitution of the grantee under a grant award.

• To remove unnecessary provisions and ambiguities in the current regulations.

• Part 315 on Certification and Adjustment Assistance for Firms has been substantially modified to reflect that this program has been scaled back since communities are no longer funded and loans are no longer made. Trade Adjustment Assistance Centers (TAACs) are described, including the role they play in the certification and adjustment assistance process.

• Part 317—Sections providing for the enforcement of Title VI have been modified to remove the mandatory submission of the Affirmative Action Plan, thereby reducing the paperwork burden on the applicant. The modification does not remove the authority to enforce Title VI.

Table of Changes

The following distribution table lists all the changes to the regulations, including those discussed above.

• In the left column, the table lists the old sections in 13 CFR Chapter III.

• In the middle column, the table lists new parts or sections that track the number and/or provisions of the regulations in the left column.

• In the right column, the table explains the changes from the old section in the left column to the new section in the middle column.

Old section	New section	Description of change
Part 301—Establishment and Organization.	Part 300—General Information	Renamed and redesignated.
Subpart A—Introduction	.....	Removed as unnecessary.
§ 301.1	§ 300.1	The new rule adds statement that unless otherwise so stated, all parts describe requirements which are based upon and subject to PWEDA.
§ 301.2	§ 300.2	The new rule contains definitions of terms, used throughout the rule, unless otherwise provided.
Subpart B—Description of Program Areas.	.....	Removed as unnecessary since repeated elsewhere in the rule.
Subpart C—Description of Organization.	.....	Removed as unnecessary.
§ 301.30, § 301.31	§ 300.4	The new rule refers to EDA's annual FY NOFA for addresses and phone numbers of EDA's Washington, D.C., Regional and EDR offices.
§§ 301.34–301.36	.....	Removed as unnecessary.
Subpart D—Disclosure of Information to the Public.	.....	Removed as unnecessary.
§ 301.50	§ 316.8	The new rule redesignates this section.
Subpart E—Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers.	.....	Removed as unnecessary.
§ 301.70	§ 300.3	The new rule redesignates this section and updates for accuracy.
Part 302—Designation of Areas	Part 301—Designation of Areas ...	Redesignated.
Subpart A—Standards for Designation of Redevelopment Areas Under Section 401(a) of the Act.	Subpart A—Standards for Designation of Redevelopment Areas Under Section 401(a) of the Act.	Redesignated.
§§ 302.1–302.3	§§ 301.1–301.3	The new rule redesignates this section ad refers to PWEDA for area designations on the basis of unemployment, loss of population, and median family income.
§§ 302.4–302.5	§§ 301.4–301.5	The new rule redesignates this section. Refers on EDA, not Assistant Secretary for area designations on the basis of American Indian lands and sudden rise in unemployment.
§ 302.6	.....	Removed since no longer in effect.
§ 302.7	§ 301.6	The new rule redesignates this section and refers to EDA, not Assistant Secretary.
§ 302.8	§ 301.7	The new rule redesignates this section and refers to EDA, not Assistant Secretary.
§ 302.9	§ 301.8	The new rule redesignates, updates and removes unnecessary references.
§ 302.10	§ 301.9	The new rule redesignates this section.
§ 302.11	§ 301.10	The new rule redesignates this section and refers to EDA, not Assistant Secretary.
§ 302.12	§ 301.11	The new rule redesignates this section which no longer repeats statutory language.

Old section	New section	Description of change
§ 302.13	§ 301.12	The new rule redesignates this section and refers to EDA, not Assistant Secretary. No longer cites to old § 302.6.
Subpart B—Limitations on Designation of Areas.	Subpart B—Limitations on Designation of Areas.	Redesignated.
§ 302.20	§ 301.13	The new rule redesignates this section. Refers to EDA, not Assistant Secretary.
§ 302.21	§ 301.14	The new rule redesignates this section. Refers to EDA, not Assistant Secretary.
Subpart C—Annual Review, Modification, and Termination of Designated Areas.	Subpart C—Modification of Designated Areas.	Redesignated and renamed.
§ 302.40	§ 301.15	The new rule redesignates and streamlines this section. Refers to EDA, not Assistant Secretary.
§ 302.41		Removed as no longer in effect.
Subpart D—Notice	Subpart D—Notice	Redesignated.
§ 302.50	§ 301.16	The new rule redesignates and streamlines this section.
§ 302.51		Removed as repetitive.
Subpart E—Information		Removed as unnecessary.
Part 303—Economic Development Districts.	Part 302—Economic Development Districts.	Redesignated.
Subpart A—Standards for Designation, Modification and Termination of Economic Development Districts.	Subpart A—Standards for Designation, Modification and Termination of Economic Development Districts.	Redesignated.
§§ 303.1–303.3	§§ 302.1–302.3	The new rule redesignates and streamlines these sections and makes them easier to read. Refers to EDA, not Assistant Secretary.
§ 303.4–1	§ 302.4	The new rule redesignates this section and deletes references to waiver and to Civil Rights Guidelines.
§ 303.4–2		Removed because it is no longer necessary as a matter of policy.
§ 303.4–3	§ 302.5	The new rule redesignates this section and deletes references to EDA components, certain civil rights requirements and outdated requirements.
§ 303.5	§ 302.6	The new rule redesignates this section and no longer repeats statutory language.
§ 303.6	§ 302.7	The new rule redesignates this section. Refers to EDA, not Assistant Secretary.
§ 303.7	§ 302.8	The new rule redesignates and streamlines this section. Refers to EDA, not Assistant Secretary and deletes unnecessary references.
§ 303.8	§ 302.9	The new rule redesignates this section and removes references to other parts of the regulations as unnecessary.
Subpart B—Standards for Designation Modification, and Termination of Economic Development Centers.	Subpart B—Standards for Designation, Modification, and Termination of Economic Development Centers.	Redesignated.
§§ 303.10–303.14	§§ 302.10–302.14	The new rule redesignates these sections. Refer to EDA, not Assistant Secretary.
Subpart C—Financial and Other Assistance to Economic Development Centers and Districts.	Subpart C—Financial and Other Assistance to Economic Development Centers and Districts.	Redesignated.
§§ 303.20–303.25	§§ 302.15–302.19	The new rule redesignates these sections. Refer to EDA, not Assistant Secretary and cite to new redesignated regulations.
Part 304—Overall Economic Development Program.	Part 303—Overall Economic Development Program.	Redesignated.
§ 304.1	§ 301.1	The new rule redesignates and streamlines this section to remove cites to other regulations as unnecessary.
§ 304.2	§ 303.2	The new rule redesignates this section. It has been shortened and made easier to read.
§ 304.3	§ 303.3	The new rule redesignates and shortens this section. References to Civil Rights Guidelines have been removed.
§ 304.4	§ 303.4	The new rule redesignates this section and makes it easer to read and use.
§§ 304.5–304.6	§ 303.5	The new rule redesignates this section. It combines two sections and removes unnecessary requirements.
§§ 304.7 and 304.9	§ 303.6	The new rule redesignates this section. It combines two sections into a streamlined and easier to read section.
§ 304.8		Removed.
	Part 304—General Selection Process and Evaluation Criteria.	The new rule adds part 304 which sets forth uniform selection procedures and general evaluation criteria for projects funded under PWEDA.
Part 305—Public Works and Development Facilities Program.	Part 305—Public Works and Development Facilities Program.	The new rule streamlines and clarifies this part.

Old section	New section	Description of change
Subpart A—Direct and Supplementary Grants for Public Works and Development Facilities.	Subpart A—General	Renamed.
§ 305.1	§ 305.1	The new rule expands the purpose section to include the scope of public works projects in creating and retaining private sector jobs to alleviate unemployment and underemployment.
§ 305.2	§ 305.2	The new rule is updated to include the Republic and Palau as an eligible applicant and states that private or public non-profts must represent a redevelopment area or part thereof and the project must be located within an eligible EDA area represented by such non-profit.
	§ 305.3	The new rule describes eligibility requirements.
§§ 305.3–305.4	§§ 305.4 and 305.6	The new rule separates out statutory requirements for regular public works and for public works impact program projects and places them in § 305.4 as project requirements. New § 305.6 contains evaluation criteria previously found in annual fiscal year NOFAs and has been modified to encompass all types of projects under this program.
	§ 305.5	The new rule sets forth the selection process.
	Subpart B—Supplementary and Overrun Grants.	The new rule adds this subpart.
§ 305.5	§ 305.8	The new rule redesignates and streamlines this section to delete unnecessary narrative.
§ 305.6	§ 305.9	The new rule redesignates this section. Refers to EDA, not Assistant Secretary.
§ 305.7		Removed since program is no longer in effect.
	§ 305.7	The new rule adds this section on award requirements which have appeared in EDA's NOFA which indicates the length of time for a grant award under this program and matching local share requirements.
§ 305.8	§ 305.10	The new rule redesignates this section. Refers to EDA, not Assistant Secretary.
Subpart B—Public Works Development Facilities Loans.		Removed since program is no longer in effect.
Subpart C—Specific Types of Projects.		Removed since contained burdensome policy requirements.
Subpart D—Limitations		Removed because some sections repeated requirements found elsewhere and others were based on restrictive policies.
Subpart E—Project Costs		Removed because requirements were unnecessary and repetitive.
Subpart F—Disbursement of Funds for Grant and Loan Projects.		Removed as unnecessary.
§§ 305.81–305.85		Removed since program no longer is in effect.
§§ 305.86–305.87	§ 305.11	The new rule combines portions of these sections to provide greater flexibility and to update terminology for financial assistance award and references to EDA, not Assistant Secretary.
§ 305.88		Removed as unnecessary.
§ 305.89	§ 305.12	The new rule redesignates this section.
Subpart G—Servicing of Grant and Loan Projects.		Removed as unnecessary.
§§ 305.91–305.95		Removed as unnecessarily repetitive.
§ 305.96	§ 305.15	The new rule redesignates and retitles this section as ''Contract and Subcontract Clauses.'' The new rule refers to the Common Rule at 15 CFR Part 24 and OMB Circular A–110 for required clauses.
§ 305.97		Removed and merged into new § 314.7.
§ 305.98	§§ 305.13–305.14	The new rule reformulates portions of the old rule and states that any changes made without prior approval by EDA are made at grantee's own risk of suspension or termination of the project (§ 315.13); and a section on final inspection has been set out (§ 305.14).
§ 305.99		Removed as unnecessarily repetitive.
§ 305.100		Removed and merged into new § 316.7.
Part 306—Business Development Program.		Removed since program is no longer in existence.
Subpart A—Financial Assistance & Commercial Purposes.		Removed.
Subpart B—Project Closing and Servicing.		Removed.
§§ 306.31–306.33	§ 316.7	The new rule redesignates, combines and renames these sections as ''Project Servicing'' to assure retention of EDA's monitoring and servicing of business development loans and guarantees. Refers to EDA, not Assistant Secretary.

Old section	New section	Description of change
Part 307—Technical Assistance, Research, and Information.	Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation and Planning.	Renamed.
Subpart A—Technical Assistance	Subpart A—Local Technical Assistance; Subpart B—University Center Program; Subpart C—National Technical Assistance.	Renamed.
§§ 307.1–307.2	§§ 307.1, 307.6 and 307.11	The new rule is divided into 3 subparts for technical assistance (TA) with the purpose and scope of the local TA program stated in § 307.1; the purpose and scope of the university center program stated in § 307.6 and the purpose and scope of the national TA program stated in § 307.11.
§§ 307.3, 307.4 and 307.6	§§ 307.4, 307.9 and 307.14	The new rule has a separate evaluation criteria section for each of the three kinds of TA projects describing factors considered in choosing projects to be funded. Subpart A describes local TA programs, Subpart B describes university center programs, and Subpart C describes national TA programs.
§ 307.5	§§ 307.2, 307.7 and 307.12	The new rule in Subparts A–C described above lists eligible applicants under each of the three TA programs.
	§§ 307.3, 307.8 and 307.13	The new rule in Subparts A–C described above explains the selection process under each of the three TA programs.
§§ 307.7–307.9	.....	Removed because program is no longer in existence.
§ 307.10	§§ 307.5, 307.10 and 307.15	The new rule redesignates and renames these sections as ''Award Requirements'' and streamlines requirements on local share, duration, etc.
§§ 307.11–307.17	.....	Removed because repeats other authorities.
Subpart B—Planning Grants and Economic Growth Study Grants.	Subpart E—Economic Development Districts, American Indian Tribes and Redevelopment Areas, Economic Development Planning Grants.	Redesignated and renamed.
§§ 307.21–307.22	§ 307.22	The new rule describes the purpose and scope of planning grants for administrative expenses. References to economic growth study grants have been removed.
§ 307.23	.....	Removed because program is no longer in existence.
	§ 307.23	The new rule adds a definition section describing the two categories of planning grants for purposes of the EDA grant rate.
§ 307.24	§ 307.24	The new rule describes eligible applicants as economic development districts, redevelopment areas or parts thereof, American Indian tribes, organizations representing tribes, the Republics of Palau, Marshall Islands, the Commonwealths of Puerto Rico, and Northern Marianna Islands, the Federated States of Micronesia, U.S. Virgin Islands, American Samoa and Guam.
§ 307.25	§§ 307.27–307.28	The new rule sets forth award requirements and limitations.
§§ 307.26–307.27	.....	Removed because repeated other authorities and referred to program no longer in existence.
	§ 307.25	The new rule describes the selection process including those having to do with an overall economic development program (OEDP).
§ 307.28	§ 307.26	The new rule sets forth EDA's evaluation criteria using some elements in old rule.
§ 307.29	.....	Removed as unnecessary.
Subpart C—Study, Training, and Research Program.	Subpart D—Research and Evaluation.	Redesignated and renamed.
§§ 307.41–307.42	§ 307.16	The new rule describes the purpose and scope of research and evaluation grants and cooperative agreements.
	§ 307.17	The new rule describes eligible applicants.
	§ 307.18	The new rule describes the selection process.
	§ 307.19	The new rule describes the evaluation criteria.
	§ 307.20	The new rule describes research topics and structure.
	§ 307.21	The new rule describes award requirements.
§§ 307.43–307.44	.....	Removed because repeated portions of the Act.
Subpart D—State and Local Economic Planning Grants.	Subpart F—State and Urban Economic Development Planning Grants.	Redesignated and renamed.
§§ 307.50–307.51	§ 307.29	The new rule describes the purpose and scope of state and urban economic planning grants.
§§ 307.53 and 307.55	§ 307.32	The new rule sets forth evaluation criteria for these planning grants using some elements in the old rule.
§ 307.52	§ 307.30	The new rule describes eligible applicants as governors of states, chief executive officers of cities or designated entities and counties, and sub-state planning and development organizations.

Old section	New section	Description of change
§ 307.54	§ 307.31	The new rule sets forth EDA's selection process for this planning program, modifying the old rule.
§ 307.56	§ 307.33	The new rule describes award requirements for planning grants including the duration of grants and local share match requirements.
§§ 307.57–307.59		Removed as unnecessary.
Part 308—Special Economic Development and Adjustment Assistance Grants.	Part 308—Requirements for Grants Under the Title IX Economic Adjustment Program.	The new rule renames, streamlines, and clarifies this part.
Subpart A—Requirements for Adjustment Grants Under Title IX.		Removed.
§ 308.1	§ 308.1	The new rule is more detailed in describing various components of the purpose and scope of economic adjustment programs, most of which was in EDA's annual NOFA.
§§ 308.2–308.3	§ 308.3	The new rule describes eligible applicants under the economic adjustment program.
§ 308.4	§ 308.4	The new rule is revised to describe eligibility criteria for areas wishing to receive economic adjustment grants. The new rule is more concise and easier to read and use.
§ 308.5 and Subpart B—Specific Uses of Grants to Carry out Economic Adjustment.	§ 308.2	The new rule redesignates this section and subpart and describes how funds under this program can be used.
	§ 305.5	The new rule sets forth the selection process for economic adjustment grants.
§ 308.6		Removed as unnecessary.
	§ 308.6	The new rule sets forth evaluation factors used by EDA in selecting projects for economic adjustment funding. Such factors have been published in EDA's annual fiscal year NOFAs.
Subpart C—Reports		Removed as unnecessary.
	§ 308.7	The new rule sets forth award requirements for adjustment assistance grants, including matching share and reporting requirements.
Part 309—General Requirements	Part 316—General Requirements	Redesignated.
§ 309.0		Removed as unnecessary.
§ 309.1	§ 316.2	The new rule redesignates this section. The new rule updates procedures for certification from EPA as to waste treatment, since many states have been delegated authority by EPA to make such certifications. EDA can in those instances rely on such state certifications.
§ 309.2	§ 316.3	The new rule redesignates this section and renames it as ''Excess Capacity''. It streamlines and clarifies to describe a more efficient method for making Section 702 findings under the Act and includes additional categories of exemptions from doing reports and studies based upon the nature of the goods and services to be produced, the nature of the EDA assistance, and market conditions.
§ 309.3	§ 316.4	The new rule redesignates this section. It greatly simplifies EDA's nonrelocation requirement and applies only to firms relocating before the EDA grant award.
§ 309.4	§ 316.5	The new rule redesignates this section. Exemptions have been added concerning electric and gas energy.
§§ 309.5–309.14		Removed as unnecessarily repetitive.
§§ 309.15, 309.18 and 315.3(c)	§ 316.1	The new rule redesignates this section and lists major environmental requirements noting that the list will be supplemented and modified as applicable in EDA's annual fiscal year NOFAs.
§§ 309.16–309.17		Removed as unnecessary.
§ 309.19	§ 316.9	The new rule redesignates this section. It does not make any substantive changes.
§§ 309.20	Part 317—Civil Rights	The new rule redesignates and streamlines this section, clarifying EDA's civil rights requirements.
§§ 309.21–309.24		Removed since no longer in effect.
§ 309.25	§ 316.6	The new rule redesignates this section. Refers to EDA, not Assistant Secretary.
§§ 309.26–309.29		Removed as unnecessarily repetitive.
Part 310–Relocation Assistance and Land Acquisition Policies.		Removed as unnecessarily repetitive.
Part 311—Civil Rights Requirements on EDA Assisted Projects and 315.5(b).	Part 317—Civil Rights	The new rule redesignates this part, streamlining and clarifying EDA's civil rights requirements.
Part 312—Supplemental and Basic Assistance Under Section 304 of the Act.	Part 312—Supplemental and Basic Assistance Under Section 304 of the Act.	The new rule streamlines and clarifies this part.
§§ 312.1–312.2		Removed as unnecessary and outdated.
§ 312.3	§§ 312.1 and 312.4	The new rule states the purpose and scope of supplemental and basic assistance under Section 302 of PWEDA (§ 312.1) and award requirements, including local share match (§ 312.4).

Old section	New section	Description of change
§§ 312.4–312.5	§§ 312.2–312.3	The new rules remove references to business loan programs under Title II of the Act, since such programs have not been appropriated funds over the past several years, and they refer to EDA, not the Assistant Secretary.
§ 312.6	§ 312.5	The new rule redesignates this section. The new rule on construction management deletes references to Title II of the Act.
§ 312.7	§ 312.6	The new rule redesignates this section. The new rule on conditions for disbursements has been updated to delete references to Title II of the Act (see above) and to refer to EDA, not Assistant Secretary.
Part 313—Job Opportunities Program.		Removed as no longer in effect.
Part 314—Property Management Standards.	Part 314—Property Management Standards.	The new rule streamlines and clarifies this part.
Subpart A—Real Property		Removed.
§ 314.1	§ 314.1	The new rule begins the property management standards part by setting forth the Federal interest and applicability of this part to only grants and cooperative agreements.
§ 314.2	§ 314.2	The new rule contains definitions not found in the current rule, and removes some that are no longer applicable. For example, personal property and estimated useful life are included and defined.
§ 314.3	§ 314.3	The new rule covers real and personal property and is streamlined to read clearly in setting forth authorized use requirements.
§ 314.4	§§ 314.4 and 314.5	The new rule on unauthorized use of real and personal property has been streamlined and simplified and includes reference to EDA, not the Assistant Secretary (§ 314.4); and the rule on valuation has been expanded to a separate section on the Federal share which covers leasehold situations, transfer of property and the end of EDA's interests in the ownership, use or disposition of the property.
§ 314.5	§ 314.6	The new rule redesignates this section and renames it as ''Encumbrances''. The new rule has been clarified and streamlined in describing situations involving encumbrances, including waivers.
	§ 314.7	The new rule sets forth title requirements.
§ 314.6	§§ 314.8 and 314.9	The new rule is divided into separate subparts for real and personal property. § 314.8 sets forth requirements for recording statements for projects involving acquisition construction or improvement of a building; and § 314.9 does the same for the acquisition or improvement of significant items of tangible items of personal property.
	§ 314.10	The new rule sets forth specific requirements for revolving loan funds (RLFs).
Subpart B—(Reserved)		Removed as unnecessary.
Subpart C—Excess Property § 314.50.		Removed as no longer in effect.
Part 315—Certification and Adjustment Assistance for Firms and Communities.	Part 315—Certification and Adjustment Assistance for Firms and Communities.	The new rule streamlines and clarifies this part and subpart.
Subpart A—General Provisions	Subpart A—General Provisions.	
§ 315.1	§ 315.1	The new rule describes the updated purpose and scope of EDA's role in the certification and adjustment assistance for firms under Chapter 3 of Title II of the Trade Act of 1974, as amended.
§§ 315.2, 315.29, 315.53	§ 315.2	The new rule's definitions section for Trade Act certifications and adjustment assistance cooperative agreements, has been expanded to include significant words or phrases in this part.
§ 315.3(a)		Removed as not applicable.
Subpart B—Certification of Eligibility of Firms to Apply for Adjustment Assistance.	Subpart B—Trade Adjustment Assistance Centers.	Renamed.
§§ 315.20–315.23(a)(b)		Removed as no longer in effect.
§ 315.23(c)	§ 315.3	The new rule streamlines and clarifies requirements concerning submission of information which a firm seeks to designate as confidential business information.
	§ 315.4	The new rule describes eligible applicants under EDA's Trade Act Program.
	§ 315.5	The new rule describes EDA's selection process, much of which was published in EDA's annual FY NOFA.
§§ 315.23 (d)–(f)–315.24, 315.30	§ 315.10	The new rule sets forth requirements for processing petitions for certification, including acceptance, withdrawal and investigations.
§§ 315.25–315,27, 315.31	§ 315.11	The new rule sets forth requirements for appeals and final determinations.
§ 315.28	§ 315.9	The new rule redesignates and renames this section as ''Certification Requirements''. It has been streamlined and made easier to read and understand.

Old section	New section	Description of change
Subpart C—Adjustment Assistance for Firms.	Subpart C—Certification of Firms .	Renamed.
§§ 315.51–315.52	§ 315.6	The new rule describes evaluation criteria for TAACs, firms and organizations representing trade-injured industries.
§ 315.54(d)	§ 315.7	The new rule sets forth award requirements which include duration of awards and matching share requirements.
§§ 315.54 (b)(1) and (c)	§ 315.8	The new rule describes the purpose and scope of TAACs.
§ 315.32	§ 315.12	The new rule redesignates and renames this section as ''Termination of Certification and Procedure.'' It is streamlined and refers to EDA, not Deputy Assistant Secretary for Planning.
§ 315.54 (a), (b)(2)		Removed as no longer in effect.
§§ 315.55–315.66		Removed as no longer in effect.
Subpart D—Study of Firms in an Industry Which is the Subject of an Investigation of Injury or Threat of Injury by the International Trade Commission.	Subpart D—Assistance to Industries.	Renamed.
§ 315.80		Removed as no longer in effect.
	§ 315.13	The new rule describes loss of certification benefits.
§ 315.81	§ 315.14	The new rule redesignates and renames this section as ''Assistance to Firms in Import-impacted Industries.'' It has been updated to refer to section 202(B) of the Trade Act and to clearly describe industry assistance limitations.
Subpart E—Certification of Eligibility of Communities to Apply for Adjustment Assistance and Subpart F—Adjustment Assistance for Communities.		Removed as no longer in effect.
Part 316—Local Public Works Capital Development and Investment Program.		Removed as no longer in effect.
	§ 316.7	The new rule sets forth loan and loan guarantee servicing procedures.
	§ 316.10	The new rule sets forth additional requirements, policies and procedures applicable to EDA programs.
Part 317—Round II of the Local Public Works Capital Development and Investment Program.		Removed as no longer in effect.
Part 318—Community Emergency Drought Relief Program §§ 318.1–318.23 and 318.25.		Removed as no longer in effect.
§ 318.24		Removed and merged with new § 316.7.

Savings Clause

The rights, duties, and obligations of all parties pursuant to parts, sections and portions thereof of the Code of Federal Regulations removed by this rule shall continue in effect.

Executive Order 12866

This interim-final rule has been determined to be significant for purposes of E.O. 12866.

Notice and Comment

This rule is not subject to the rulemaking requirements of 5 U.S.C. 553 because it relates to public property, loans, grants, benefits and contracts, 5 U.S.C. 553(c)(2), including the provision of prior notice and an opportunity for public comment and delayed effective date.

No other law requires that notice and opportunity for comment be given for this rule.

However, because the Department is interested in receiving comments from those who will benefit from the amendments, this rule is being issued as interim final. Public comments on the interim final rule are invited and should be sent to the address or numbers listed in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections above.

Comments received by November 27, 1995 will be considered in promulgating a final rule.

Regulatory Flexibility Act

Since notice and an opportunity for comment are not required to be given for the rule under 5 U.S.C. 553 or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) no initial or final Regulatory Flexibility Analysis is required, and none has been prepared.

Paperwork Reduction Act

This rule contains new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) pending approval of the Office of Management and Budget.

E.O. 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects

13 CFR Part 300

Reporting and recordkeeping requirements.

13 CFR Part 301

Community development.

13 CFR Part 302

Community development; Grant programs-community development; Loan programs-business; Loan programs-community development; Technical assistance.

13 CFR Part 303

Community development; Reporting and recordkeeping requirements.

13 CFR Part 304

Selection and evaluation.

13 CFR Part 305

Community development; Community facilities; Grant programs-community development; American Indians.

13 CFR Part 307

Business and industry; Community development; Grant programs—business; Grant programs—community development; American Indians; Research; Technical assistance.

13 CFR Part 308

Business and industry; Community development; Community facilities; Grant programs—business; Grant programs—community development; American Indians; Manpower training programs; Mortgages; Relocation assistance; Rent subsidies; Reporting and recordkeeping requirements; Research; Technical assistance; Unemployment compensation.

13 CFR Part 312

Community development; Grant programs—community development.

13 CFR Part 314

Community development; Grant programs—community development.

13 CFR Part 315

Administrative practice and procedure; Community development; Grant programs—business; Technical assistance; Trade adjustment assistance.

13 CFR Part 316

Community development; grant programs—community development; Freedom of information; Uniform Relocation Act.

13 CFR Part 317

Civil rights; sex discrimination.

For the reasons set forth in the preamble, 13 CFR Chapter III is revised to read as follows:

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

Part

300 General Information
301 Designation of Areas
302 Economic Development Districts
303 Overall Economic Development Program
304 General Selection Process and Evaluation Criteria
305 Public Works and Development Facilities Program
306 [Reserved]
307 Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation and Planning
308 Requirements for Grants Under the Title IX Economic Adjustment Program
309 [Reserved]
310 [Reserved]
311 [Reserved]
312 Supplemental and Basic Under Section 304 of the Act
313 [Reserved]
314 Property Management Standards
315 Certification and Adjustment Assistance for Firms
316 General Requirements for Financial Assistance
317 Civil Rights
318 [Reserved]

PART 300—GENERAL INFORMATION

Sec.

300.1 Purpose.
300.2 Definitions.
300.3 OMB control numbers.
300.4 Economic Development Administration—Washington, D.C., Regional Offices and Economic Development Representatives.

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

§ 300.1 Purpose.

The purpose of the Public Works and Economic Development Act of 1965, as amended, (PWEDA) as administered by the Economic Development Administration (EDA), is to provide assistance in economically distressed areas, regions and communities in order to alleviate conditions of substantial and persistent unemployment and underemployment and to establish stable and diversified economies subject to PWEDA. Unless otherwise stated in this Chapter, all parts describe requirements which are based upon and subject to PWEDA.

§ 300.2 Definitions.

Unless otherwise defined in other parts or sections of this chapter, the terms listed below are defined as follows:

Act and PWEDA are used interchangeably to mean the Public Works and Economic Development Act of 1965, as amended. (Pub. L. 89–136, 42 U.S.C. 121 et seq.)

Alaskan Native Village means:

(1) A town or village site occupied and used by natives of Alaska-American Indians, Eskimos, and Aleuts under the Native Townsite Act of 1926;

(2) Native villages under the Alaska Native Claims Settlement Act and any contiguous corporate boundary adjustments under the state laws of Alaska; and

(3) Such additional lands as are authorized to be included under the Pub. L. 92–203, sec 2, Dec. 18, 1971, 85 Stat. 688, 43 U.S.C. 1601.

Community Development Corporation means an entity as defined in the Community Economic Development Act of 1981, 42 U.S.C. 9802; i.e., Community Development Corporations receiving financial assistance under authority of the Community Assistance Block Grant Act, as amended, 42 U.S.C. 9815.

Cooperative agreement, grant, financial assistance award, financial assistance grant, offer of grant and grant award all refer to the non-procurement award of EDA funds to an eligible entity under PWEDA or the Trade Act, as applicable.

District, Economic Development District or EDD means a geographic area consisting of one or more redevelopment areas as defined under PWEDA and designated in accordance with part 302 of this chapter.

EDA means the Economic Development Administration when a place or agency is intended; or it means the Assistant Secretary of Commerce for Economic Development or his/her designee when a person is intended.

Growth Center means either an Economic Development Center (EDC), which is a geographic area located outside an EDA designated area, containing a population of 250,000 or less and identified in an OEDP as having growth potential and the ability to alleviate distress within the EDD; or a Redevelopment Center, which is a geographic area located within a designated redevelopment area identified in an OEDP as having growth potential and the ability to alleviate distress within the EDD.

American Indian Tribe means the governing body of a tribe, non-profit American Indian corporation (restricted to American Indians); American Indian authority or other tribal organization or entity or Alaskan Native Village.

Local share, matching share or local share match are used interchangeably to mean non-Federal funds or goods and services from recipients or third parties, and includes funds from other Federal agencies only if there is statutory authority allowing such use.

OEDP means an Overall Economic Development Program, (or plan of action) pertaining to an area or district.

Project means the activity or activities whose purpose fulfills EDA program requirements and which is funded in whole or in part by EDA.

Proposed District means a geographic entity composed of one or more

designated redevelopment areas represented by an entity seeking designation as an EDD.

Public Works and Development Facility means a project funded under Title I of the Act.

Recipient, grantee, and awardee are used interchangeably to mean an entity accepting funds from EDA under PWEDA or the Trade Act, as applicable and includes any EDA approved successor to such recipient. Similarly, *subawardee, subgrantee and subrecipient* are also used interchangeably.

The *Trade Act* means Chapter 3, Title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 et seq.).

§ 300.3 OMB control numbers.

(a) This table displays control numbers assigned to EDA's information collection requirements by the Office of Management and Budget (''OMB'') pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. EDA intends that this table comply with Section 3507(f) of the Paperwork Reduction Act, requiring agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) Control Number Table:

13 CFR part or section where identified and described	Current OMB control No.
Part 305	0610–0011 0610–0092
Part 308	0610–0058 0610–0092
Part 315	0610–0091
Sec. 316.4	0610–0082
Sec. 312.5	0610–0011

§ 300.4 Economic Development Administration—Washington, D.C., Regional Offices and Economic Development Representatives.

For addresses and phone numbers of the Economic Development Administration in Washington, D.C., its Regional and Field Offices and Economic Development Representatives, refer to EDA's annual FY NOFA.

PART 301—DESIGNATION OF AREAS

Subpart A—Standards for Designation of Redevelopment Areas Under and Subject to Section 401(a) of the Act

Sec.
301.1 Designation on the basis of unemployment.
301.2 Designation on the basis of loss of population.
301.3 Designation on the basis of median family income.
301.4 Designation on the basis of American Indian lands.
301.5 Designation on the basis of sudden rise in unemployment.
301.6 Designation of public works impact program areas.
301.7 Designation of special impact areas.
301.8 Recognition of redevelopment areas designated under the Community Economic Redevelopment Act of 1981, as amended.
301.9 Designation on the basis of per capita employment.
301.10 Designation on the basis of substantial unemployment and the national average rate of unemployment.
301.11 Designation on the basis of long-term economic deterioration.
301.12 Exception to criteria for qualification.

Subpart B—Limitations on Designation of Areas

301.13 Limitations with respect to the size and boundaries of redevelopment areas.
301.14 Receipt of an acceptable OEDP.

Subpart C—Modification of Designated Areas

301.15 Adjustment of boundaries.

Subpart D—Notice

301.16 Notification of public officials.

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

Subpart A—Standards for Designation of Redevelopment Areas Under and Subject to Section 401(a) of the Act

§ 301.1 Designation on the basis of unemployment.

On the basis of labor force data on unemployment supplied by the Secretary of Labor, EDA shall designate such redevelopment areas in accordance with section 401(a) of the Act.

§ 301.2 Designation on the basis of loss of population.

Such designation shall be made in accordance with section 401(a) of the Act, 42 U.S.C. 3161.

§ 301.3 Designation on the basis of median family income.

Such designation shall be made in accordance with section 401(a) of the Act.

§ 301.4 Designation on the basis of American Indian lands.

(a) EDA shall designate as Redevelopment Areas those American Indian reservations, American Indian trust land areas, and restricted American Indian-owned land areas, including Alaskan Native Villages, which manifest the greatest degree of economic distress.

(1) American Indian reservations shall consist of land areas which by official Federal or State action or recognition have been reserved for the use and benefit of a specific American Indian tribe or tribes, and shall include those lands to which the Federal or State Government retains title and may include tribally-owned lands, lands allotted to individual tribal members, and interspersed land belonging to non-American Indians.

(2) American Indian trust land areas shall consist of land areas held in trust by or under the authority of Federal or State Government for use and occupancy by American Indians.

(3) Restricted American Indian-owned land areas shall consist of land areas owned by American Indian tribes, but subject to restrictions on alienation or use imposed by Federal or State Governments.

(b) EDA shall make such designations of Redevelopment Areas upon consultation with the Secretary of Interior or an appropriate State agency and on the basis of unemployment and income statistics and other appropriate evidence of economic underdevelopment.

(c) EDA, upon consultation with the Secretary of Interior or an appropriate State agency, may designate uninhabited Federal or State American Indian reservations or trust or restricted American Indian-owned land areas where such designation would permit assistance to American Indian tribes, with a direct beneficial effect on the economic well-being of American Indians.

(d) When the determination of economic distress pertains to land areas that are not contiguous, it must be shown that there is a clear economic connection between the noncontiguous land areas that will contribute to a more effective economic development program for the area.

§ 301.5 Designation on the basis of sudden rise in unemployment.

Such designation can be made under the Act when the following conditions are met:

(a) Where the loss, removal, curtailment, or closing of the major source of employment has occurred provided that:

(1) The major source of employment shall be construed as a single firm or industry; or

(2) Job losses in more than a single firm or in more than in a single industry may be considered in the aggregate where:

(i) There is a clear demonstrable economic connection between or among the firms or industries; or

(ii) More than one firm or industry has been affected by a common disaster.

(3) A major source of employment is when its loss, removal, curtailment, or closing has caused or can reasonably be expected to cause:

(i) An increase of 500 or more of unemployed persons in the area; or

(ii) An increase of 2 percentage points or more in the area's unemployment rate, based on the relationship of actual or expected additional unemployed to the number of persons in the area's labor force.

(b) Where there is an actual or threatened closing of a major source of employment within 3 years after the date of the area's request provided that:

(1) The rise in unemployment must be shown to be unusual or unique for the area, the industry, and the time of year; and

(2) Such rise must have occurred or be reasonably expected to occur during a 1-year period within the qualifying span of 3 years before to 3 years after the date of the request for designation.

(c) The area's unemployment rate can reasonably be expected to exceed the national average by 50 percent or more, except for those job-loss situations in which it is public knowledge that the jobs lost were or will be of a type in such great demand that the persons laid off were or will be readily reemployable.

(d) Areas designated under this section are allowed a reasonable time after designation to submit an acceptable OEDP to EDA. An area designated under this section which does not have an approved OEDP is not eligible for financial assistance under Title I of the Act.

§ 301.6 Designation of public works impact program areas.

(a) EDA shall designate communities or neighborhoods defined without regard to political or other subdivisions or boundaries as a public works impact program (PWIP) area, when it determines one of the following conditions have been met by the defined area in its entirety.

(1) A large concentration of low income persons. This includes:

(i) An area selected for assistance under the Community Economic Development Act of 1981, as amended (42 U.S.C. 9815), Title VI, Chapter 8, Subchapter A of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35); or

(ii) An area in which the majority of the families are living in poverty, as defined by the U.S. Department of Health and Human Services guidelines, as published each year in the Federal Register.

(2) Rural areas having substantial outmigration. This includes an area which has experienced a minimum outmigration rate of at least 25 percent during the period from the beginning to the end of the most recent 10-year census period for which data is available.

(3) Substantial unemployment as established by an annual average unemployment rate of 8.5 percent or more during the most recent quarter for which such data is available.

(4) An actual or threatened abrupt rise of unemployment due to the closing or curtailment of a major source of employment. The area must meet the qualifications as set forth in paragraphs (a)–(d) of § 301.5. Although no boundary constraints, as set forth in § 301.13, shall apply, the area for which designation is sought must be one for which EDA can obtain data establishing its eligibility for designation.

(b) No PWIP area designated under this section shall be eligible to be considered a redevelopment area for the purposes of district designation.

§ 301.7 Designation of special impact areas.

EDA shall designate special impact areas where:

(a) One of the following criteria have been met:

(1) There are large concentration of low-income persons. This includes:

(i) An area presently selected for assistance by the Department of Health and Human Services under the Community Economic Development Act of 1981, as amended (42 U.S.C. 9815), (Title VI, Chapter 8, Subchapter A of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35); or

(ii) An area in which a majority of the families are living in poverty as defined by the Department of Health and Human Services guidelines as published each year in the Federal Register.

(2) Rural Areas having substantial outmigration. This includes any area which has experienced a minimum outmigration rate of at least 25 percent during the most recent 10-year period as established by the Bureau of the Census.

(3) An area of substantial unemployment, meaning one which:

(i) Experienced an average unemployment rate at least 50 percent higher than the U.S. average unemployment rate for the most recent 12-month period for which data are available; or

(ii) Is currently experiencing an unemployment rate at least 100 percent higher than the U.S. average unemployment rate.

(4) An area which has or is threatened with an abrupt rise in unemployment due to the closing or curtailment of a major source of employment, and which has or can reasonably be expected to have an unemployment rate 100 percent or more above the national average.

(b) Written requests have been submitted by State or local governments, agencies or instrumentalities thereof, or with the concurrence of the appropriate governmental authority of the political subdivision of which the area is a part, by any public or private non-profit organization or association representing the area for which designation is sought. Requests should contain the following material:

(1) A description of the proposed boundary and facility characteristics of the proposed special impact area including a map showing the relation to the larger area to which it is a part. Such description should show consistency with area wide zoning ordinances and appropriate land use plans;

(2) A description of the socioeconomic characteristics of the proposed special impact area;

(3) An OEDP; and

(4) Written evidence of support from members of the community at large.

(c) No special impact area designated under this section shall be eligible to be considered a redevelopment area for the purposes of district designation.

§ 301.8 Recognition of redevelopment areas designated under the Community Economic Redevelopment Act of 1981, as amended.

Areas selected for assistance under the Community Economic Development Act of 1981, as amended (42 U.S.C. 9815) will be deemed redevelopment areas within the meaning of section 401 of the Act.

§ 301.9 Designation on the basis of per capita employment.

EDA shall designate as redevelopment areas those areas which have suffered a significant decline in per capita employment of more than 1.2 percentage points from the beginning to the end of the most recent 10-year census period for which data is available and has had net outmigration during the same period, as determined by the most currently available census data.

§ 301.10 Designation on the basis of substantial unemployment and the national average rate of unemployment.

(a) EDA shall designate as a redevelopment area any area for which the Secretary of Labor has provided labor force data showing that:

(1) The area has experienced a substantial average unemployment rate over a 24-month period; and

(2) The area has experienced an average 24-month unemployment rate for the most recent 24-month period for which data are available which was above the national 24-month average unemployment rate for the same period.

(b) The Secretary of Labor shall provide the unemployment data for use by EDA in designating redevelopment areas pursuant to the criteria of section 401(a)(8) of the Act, as implemented by paragraphs (a)(1) and (a)(2) of this section.

(c) For the purpose of this section, *substantial unemployment* is defined as an unemployment rate of 6 percent or more.

(d) EDA may determine for the purpose of this section that 24 month unemployment data is not available so that data for the most recent 12-month or 4-month period may be used instead.

§ 301.11 Designation on the basis of long-term economic deterioration.

Such designation shall be made in accordance with section 401(a) of the Act.

§ 301.12 Exception to criteria for qualification.

(a) EDA shall designate in a State which has no redevelopment area that area which most nearly qualifies under this subpart.

(b) Designation made under paragraph (a) of this section shall be terminated in accordance with section 402 of the Act if any other area within the same State subsequently becomes qualified or designated under any other section of this subpart.

(1) Designation under paragraph (a) of this section will not be terminated under paragraph (b) of this section if the area becoming qualified or designated becomes qualified under § 301.6 or § 301.7.

(2) Termination under this subsection will become effective at the time of the annual review.

Subpart B—Limitations on Designation of Areas

§ 301.13 Limitations with respect to the size and boundaries of redevelopment areas.

(a) The size and boundaries of redevelopment areas will be determined by EDA subject to requirements under the Act for at least 1500 in population, unless designated under § 301.4 or §§ 301.6, 301.7, 301.8, and other requirements in section 401(b) of the Act.

(b) Except for areas designated under §§ 301.4, 301.5, 301.6, 301.7 and 301.8, no area may be designated which is smaller than a labor area (as defined by the Secretary of Labor), a county, or a municipality with a population of over 25,000 persons whichever EDA deems appropriate.

(c) All parts of the area seeking designation under § 301.5 must be contiguous.

(d) Delineation of the area designated under § 301.5 must be based on a reasonable grouping of census tracts or similar geographical units, or the area must be defined by specific boundaries incorporating commercial or industrial sites and enterprises which can offer employment opportunities for the work force of the area.

(e) Nothing in this section shall prevent any municipality designated or eligible to be designated as a redevelopment area from combining with any other community having mutual economic interests and transportation and marketing patterns for the purpose of such designation.

(f) Areas qualified in accordance with § 301.5 may be designated subject to the receipt of an acceptable OEDP within 6 months following such conditional designation, or within such additional period as the Assistant Secretary may grant for good cause.

(g) Any area, other than those areas eligible for designation pursuant to §§ 301.5 and 301.6, which does not submit an acceptable OEDP within 6 months after notification of its qualification for designation, shall not thereafter be designated prior to the next annual review of eligibility; however, such period may be extended for good cause.

§ 301.14 Receipt of an acceptable OEDP.

(a) No area shall be designated until it has an approved OEDP, as described in section 403 of the Act, except those areas eligible for designation under §§ 301.5 and 301.6.

(b) Areas qualified in accordance with § 301.5 may be designated subject to the receipt of an acceptable OEDP within 6 months following such conditional designation, or within such additional period as EDA may grant for good cause.

(c) Any area, other than those areas eligible for designation pursuant to §§ 301.5 and 301.6, which does not submit an acceptable OEDP within 6 months after notification of its qualification for designation, shall not thereafter be designated prior to the next annual review of eligibility; however, such period may be extended for up to 6 months if EDA determines there is good cause.

Subpart C—Modification of Designated Areas

§ 301.15 Adjustment of boundaries.

(a) EDA may make minor modifications in the boundaries of redevelopment areas designated under Subpart A of this part if:

(1) Such modification will contribute to a more effective program for economic development within such area; and

(2) There is a request in writing which:

(i) Outlines the exact extent of the boundary adjustment;

(ii) States how the absence of the boundary adjustment would impede the implementation of the approved OEDP;

(iii) States why a specifically proposed project cannot be located within the existing boundaries of the designated redevelopment area; or

(iv) States other reasons why a boundary adjustment is needed.

(3) The interested State official or agency is informed and given opportunity to submit comments on and endorse or not endorse the request.

(b) Additional areas will be included within the redevelopment area only if such inclusion is necessary to meet program requirements for a project.

Subpart D—Notice

§ 301.16 Notification of public officials.

(a) EDA shall notify local, State, and national officials when an area:

(1) Qualifies for designation under criteria set forth in subpart A of this part;

(2) Is designated; and/or

(3) Has its designation modified or terminated.

(b) [Reserved]

PART 302—ECONOMIC DEVELOPMENT DISTRICTS

Subpart A—Standards for Designation, Modification and Termination of Economic Development Districts

Sec.

302.1 Authorization of economic development districts.
302.2 Designation of economic development districts.
302.3 Designation of nonfunded districts.
302.4 District organizations.
302.5 District organization functions and responsibilities.
302.6 Coordination with state and local organizations.
302.7 Modification of district boundaries.
302.8 Termination and suspension of district designation.
302.9 Benefits.

Subpart B—Standards for Designation, Modification, and Termination of Economic Development Centers

302.10 General standards for designation of economic development centers.
302.11 Number of economic development centers per district.
302.12 Boundaries of economic development centers and boundary modifications.
302.13 Termination and suspension of economic development centers.
302.14 Redevelopment centers.

Subpart C—Financial and Other Assistance to Economic Development Centers and Districts

302.15 Financial assistance to economic development centers.
302.16 Economic development center project characteristics.
302.17 Grant rate for economic development center projects.
302.18 Financial assistance to redevelopment centers.
302.19 Assistance to economic development districts.

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

Subpart A—Standards for Designation, Modification and Termination of Economic Development Districts

§ 302.1 Authorization of economic development districts.

(a) EDA may authorize, at the request of the Governor(s) of the State or States, the delineation of proposed district boundaries as a prerequisite to designation as an economic development district and as a prerequisite to the provision of planning grants under part 307 of this chapter.

(b) Authorization of delineation may be made:

(1) Where the State or States, after analyzing economic and social relationships among the various redevelopment area counties, propose a boundary delineation for the proposed district;

(2) Where the proposed district meets the general standards for designation set forth in § 302.2;

(3) Where a consideration of the following factors has been made:

(i) The percentage of the population living in redevelopment areas;

(ii) Per capita income in the proposed district;

(iii) The percentage of families with annual income below the poverty threshold;

(iv) Unemployment rates and labor force participation rates of the proposed district;

(v) Economic characteristics of growth centers; and

(vi) The proposed district's readiness to hire a professional staff and begin work.

(4) Where the boundaries conform to an officially delineated sub-State district or where the Governor has provided EDA with an explanation of and support for any variation of the officially delineated sub-State district.

§ 302.2 Designation of economic development districts.

EDA is authorized to designate proposed districts as economic development districts (EDDs) with the concurrence of the States in which the EDDs will be wholly or partially located when the proposed district meets the following requirements:

(a) It is of sufficient size or population, and contains sufficient resources, to foster economic development on a scale involving more than a single redevelopment area;

(b) It contains at least one redevelopment area;

(c) It contains one or more redevelopment areas or economic development centers identified in an approved district overall economic development program (hereinafter OEDP) as having sufficient size and potential to foster the economic growth activities necessary to alleviate the distress of the redevelopment areas within the district;

(d) It has an OEDP which identifies one or more proposed growth centers, includes adequate land use and transportation planning, contains a specific program for district cooperation and public investment and is approved by the State or States affected and by EDA;

(e) When at least three-fourths of the counties within the proposed district boundaries have submitted documentation of their commitment to support the economic development activities of the district;

(f) A district organization has been established by the proposed district which meets the requirements of § 302.4; and

(g) The proposed district organization requests such designation.

§ 302.3 Designation of nonfunded districts.

Designation is not limited to districts receiving EDA planning grants. However, the continuing designation of any nonfunded EDD is subject to the same criteria and organization requirements applicable to funded districts.

§ 302.4 District organizations.

(a) The district organization is a prerequisite to initial designation of proposed districts and EDDs and to the provision of planning grants under part 307 of this chapter and shall be organized in one of the following manners:

(1) As non-profit organizations incorporated under the laws of the States in which they are located;

(2) As public organizations through intergovernmental agreements for the joint exercise of local government powers; or

(3) As public organizations established under State enabling legislation for the creation of multijurisdictional area wide planning organizations.

(b) Each proposed district or EDD organization must meet EDA requirements concerning its membership composition as set forth in § 302.4(c), its authorities and responsibilities for carrying out economic development functions as set forth in § 302.5, and the maintenance of adequate staff support to perform its economic development functions as set forth in § 302.4(d). Such requirements must be met by the board of directors (or other governing body of the organization) as a whole.

(c) The proposed district or EDD organization shall demonstrate that it meets all of the following requirements:

(1) It is broadly representative of the following interests:

(i) The principal economic interests of the proposed district or EDD, including business, industry, finance, transportation, utilities, the professions, labor, agriculture, Federal and State recognized American Indian tribes and education. In meeting this requirement, the representatives of the principal economic interests may be private citizens, part-time elected officials, or minority representatives also selected under paragraph (c)(1)(ii) of this section;

(ii) Minority and low-income populations whose representatives may be private citizens, elected officials, or government employees; and

(iii) Representatives of the unemployed and underemployed who may also be minority representatives selected under paragraph (c)(1)(ii) of this section.

(2) There is at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of local government who have been appointed to represent the government.

(i) Where appointment of local government members is not otherwise provided for by the district organization charter or by-laws, each county and major unit of local government which joins the proposed district or EDD shall

name an elected official or an employee to represent it.

(ii) Where appropriate to their nongovernmental occupations, part-time elected officials may also represent the principal economic interests.

(3) There is at least one-fifth of its membership who are private citizens who are neither elected officials of a general purpose unit of local government nor employees of such a government who have been appointed to represent that government.

(i) The district organization shall demonstrate that persons fulfilling this requirement represent the interests of groups listed in paragraphs (c)(1)(i) or (iii) of this section. Minority and low-income representatives who meet these criteria may be counted toward the fulfillment of the private citizen requirement.

(ii) Except where these private citizens are also selected as minority/low-income representatives under paragraph (c)(1)(ii) of this section, these representatives shall be appointed by the governing bodies of the counties actively participating in the district organization or as otherwise provided in the district organizational charter and by-laws.

(d) Staff support is provided as follows:

(1) The district organization shall be assisted by a professional staff drawn from qualified persons in planning, economics, business administration, engineering and related disciplines.

(2) EDA may provide planning grants to economic development districts to employ professional staff in accordance with part 307 of this chapter.

(e) District organizations shall provide access for persons who are not members of the district organization to make their views known concerning ongoing and proposed district activities of the proposed district or EDD in accord with the following requirements:

(1) The district organization shall conduct meetings open to the public at least once a year and shall also publish the date and agenda of the meeting at least four weeks in advance to allow the public a reasonable time to prepare to participate effectively in the meetings.

(2) The district organization shall adopt a system of parliamentary procedures to assure that board members and others have access to and an effective opportunity to participate in the affairs of the proposed district or EDD.

(3) Information should be provided sufficiently in advance of public decisions to give the public adequate opportunity to review and react to proposals. District organizations should seek to relate technical data and other material to the public so that they may understand the impact of public programs, available options and alternative decisions.

§ 302.5 District organization functions and responsibilities.

(a) District organizations must arrange to carry out two classes of functions and responsibilities: Those which every EDD must carry out (paragraph (b) of this section), and those which EDDs receiving grants must carry out (paragraph (c)).

(b) Subject to the requirements of § 302.4, district organizations are responsible for seeing that the following functions are provided for on a continuing basis:

(1) Organizational actions, including:

(i) Arranging the legal form of organization which will be used;

(ii) Arranging for the membership of the governing body to meet § 302.4 requirements;

(iii) Recruiting staff to carry out the economic development functions;

(iv) Establishing a management system;

(v) Contracting for services to carry out district functions;

(vi) Establishing and directing activities of economic development subcommittees; and

(vii) Submitting reports as determined by EDA to comply with civil rights requirements under part 317 of this chapter.

(2) Actions to develop and maintain the required district OEDP, and any subsequent supplements or revisions, including:

(i) Preparing the analytic, strategic and implementation components of the OEDP;

(ii) Identifying growth centers, i.e., economic development centers and redevelopment centers, and any later boundary modifications;

(iii) Adopting the OEDP by formal action of the EDD governing board;

(iv) Submitting the OEDP, any supplements or revisions and annual reports for reviews by appropriate governmental bodies and interested organized groups, and attaching dissenting opinions and comments received; and

(v) Submitting to EDA an approvable OEDP.

(3) Preparation of proposals that EDA take actions which:

(i) Establish or change the designation status of the district or its growth centers; or

(ii) Affect economic development projects available to the EDD.

(4) Coordination and implementation of economic development activities in the district, including:

(i) Assisting other eligible units within the district to apply for grant assistance for economic development purposes;

(ii) Carrying out economic development related research, planning, implementation and advisory functions as are necessary and helpful to the coordination with other local, State, Federal, and private organizations, and as are necessary and helpful to the development and implementation of the OEDP;

(iii) Coordinating the development and implementation of the OEDP with other local, State, Federal and private organizations (including minority organizations); and

(iv) Carrying out the annual OEDP plan for implementation.

§ 302.6 Coordination with state and local organizations.

EDA shall cooperate with state and local organizations in accordance with § 403 of PWEDA.

§ 302.7 Modification of district boundaries.

EDA (with concurrence of the State or States affected, unless such concurrence is waived by EDA) may modify the boundaries of a district consistent with standards for authorizing new districts set forth in § 302.1, if it determines that such modification will contribute to a more effective program for economic development.

§ 302.8 Termination and suspension of district designation.

EDA may, upon 30 days prior notice, terminate the designation status of an economic development district:

(a) When the district no longer meets the standards for designation as set forth in § 302.2(a), (b), (c), (d), (f), or (g); or § 302.2(e), except that district designation status may be continued if those counties which would maintain their commitment to support economic development activities are determined by EDA to meet the other standards of § 302.2 and the standards of § 302.1;

(b) When a district has not maintained a currently approved OEDP in accordance with part 303 of this chapter;

(c) When a district has requested termination (with the approval of the State or States affected, unless such approval is waived by EDA); or

(d) Where a funded district fails to comply with terms and conditions of an EDA planning grant agreement.

§ 302.9 Benefits.

(a) Designation of an economic development district within which the economic development center (EDC) is located is a prerequisite to EDA providing financial assistance to an EDC.

(b) Projects in redevelopment areas which are located within designated economic development districts and which actively participate in the economic development district's OEDP planning process are eligible for 10 percent bonus grants, if the project is consistent with a currently approved district OEDP.

Subpart B—Standards for Designation, Modification, and Termination of Economic Development Centers

§ 302.10 General standards for designation of economic development centers.

EDA may designate an economic development center if such proposed center:

(a) Has been identified and included in an approved district OEDP;

(b) Is recommended by the State or States affected. Written concurrence from the State must be received by EDA;

(c) Is geographically and economically so related to the economic development district that the economic development center's economic growth may be expected to contribute significantly to the alleviation of distress in the redevelopment areas of the district;

(d) Does not have a population in excess of 250,000 according to the last preceding Federal census;

(e) May reasonably be expected to accelerate or maintain existing rates of growth in terms of population, employment, and income;

(f) Has the prospect of developing a diversified economy providing a wide range of health, educational, recreational, and cultural facilities; a relatively large local market; a relatively large well-trained labor force; and other similar qualities which encourage the continuing growth of economic activities; and

(g) Is an active participant in the district economic development program.

§ 302.11 Number of economic development centers per district.

EDA will designate the single leading growth point in an EDD as the economic development center. However, additional centers may be designated where unusual conditions exist in the district, such as for example:

(a) Where the district contains a relatively large number of redevelopment area residents who do not have reasonable commuting access to any one economic development center; and

(b) Where the district contains several smaller growth points rather than one leading economic development center.

§ 302.12 Boundaries of economic development centers and boundary modifications.

(a) An economic development center is administratively defined as a city or grouping of contiguous incorporated places. However, where justified, boundaries may be extended to include adjoining minor civil divisions or corridors of growth between centers.

(b) EDA may modify either the boundaries of an economic development center or the number of economic development centers in a district after giving notice and opportunity for comment to the State or States affected, if such modification will contribute to a more effective program.

§ 302.13 Termination and suspension of economic development centers.

EDA may, upon 30 days prior notice to the interested State and local agencies, terminate the designated status of an economic development center when:

(a) The economic development center is no longer identified or recommended for designation in an approved district OEDP;

(b) The economic development center no longer meets the standards for designation, § 302.11;

(c) It fails to actively pursue its role as an economic development center in a manner that makes a significant impact on the performance of the economic development district within which it is located; or

(d) The economic development center is no longer part of a designated economic development district.

The termination of the designation of an economic development district and termination of the designation of an economic development center may be done concurrently.

§ 302.14 Redevelopment centers.

EDA may recognize a redevelopment center which meets the criteria for economic development centers, but which falls in a designated redevelopment area. There is no limit on the size of the population of a redevelopment center.

Subpart C—Financial and Other Assistance to Economic Development Centers and Districts

§ 302.15 Financial assistance to economic development centers.

EDA may provide financial assistance in accordance with the criteria contained in part 305 of this chapter for projects in economic development centers (EDCs) when:

(a) The project will further enhance the objectives of the OEDP of the district in which the EDC is located;

(b) The project will enhance the relationship between the EDC and the EDD, particularly the redevelopment areas; and

(c) The project will achieve one or more of the following:

(1) Encourage economic growth;

(2) Discourage out-migration from the district; and

(3) Have a beneficial impact on the district's redevelopment areas.

§ 302.16 Economic development center project characteristics.

Projects in EDCs shall have one or more of the following characteristics:

(a) High job producing capability;

(b) Remove barriers of access to jobs for the target population;

(c) Ability to trigger further project activity;

(d) Ability to trigger further economic impact; or

(e) Provision of facilities and services deemed essential to stimulate further growth, at a level above that normally required for simple maintenance of a substantial community.

§ 302.17 Grant rate for economic development center projects.

The grant rate for projects under Title I of the Act in EDCs shall not exceed 50 percent of the project costs.

§ 302.18 Financial assistance to redevelopment centers.

The eligibility of redevelopment centers for EDA financial assistance, including the 10 percent bonus as provided for in this § 302.18 is the same as for any designated redevelopment area within the district. The grant rate for the redevelopment center shall be determined by the rate applicable to the redevelopment area within which it is located.

§ 302.19 Assistance to economic development districts.

Pursuant to Title III of the Act, EDA may provide other assistance to the district including:

(a) Technical assistance;

(b) Planning grants under part 307 of this chapter to assist the district

organization in engaging a professional staff and carrying out its planning activities; and

(c) Research assistance.

PART 303—OVERALL ECONOMIC DEVELOPMENT PROGRAM

Sec.

303.1 Purpose and scope.
303.2 Redevelopment area—District OEDPs.
303.3 Redevelopment area OEDP committee.
303.4 Initial OEDP.
303.5 Approval process for initial OEDPs.
303.6 The continuing program.

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

§ 303.1 Purpose and scope.

(a) Approval of an OEDP is generally a prerequisite for designation of a redevelopment area or economic development district; and

(b) A redevelopment area or economic development district, where appropriate, is required to maintain a currently approved OEDP to retain its previous designation for eligibility to receive EDA funds.

§ 303.2 Redevelopment area—District OEDP's.

Those qualified areas within existing economic development districts may use the district's accepted OEDP in lieu of a separate area OEDP when the following conditions have been met:

(a) The area actively participates in and supports the district OEDP planning process.

(b) The area submits a letter or resolution to EDA signed by the area's chief elected official, governing body, or the local OEDP committee stating that the area will use the district OEDP.

§ 303.3 Redevelopment area OEDP committee.

(a) The primary purpose of this committee is to develop an ongoing development program and to prepare the Area OEDP.

(1) OEDP committees are required only in areas not located in districts. (District organization requirements are set forth at part 302 of this chapter and are recommended whenever practicable for other areas.)

(b) OEDP committees shall be representative of the community so that all viewpoints are considered in discussion and decisionmaking and all available local skills are engaged in program formulation. To the extent practicable, representation on these committees shall include those from local government, business, industry, finance, agriculture, the professions, organized labor, utilities, education, minorities, and the unemployed or underemployed.

§ 303.4 Initial OEDP.

(a) The initial OEDP should contain the following information:

(1) Background on the area or district's economic development situation, including for example a discussion of the district or area's:

(i) Geography;

(ii) Population;

(iii) Labor force, including minority and female;

(iv) Natural and manmade resources;

(v) Economic and social activities; and

(vi) Environmental considerations.

(2) An examination of economic and community development, opportunities and problems, including for example, identification of current major activities of other organizations involved in economic and community development and improvement; and

(3) A realistic action plan that will:

(i) Promote the district or area's economic progress;

(ii) Improve community facilities and services; and

(iii) Serve as a basis for a continuing planning and development program.

(b) In addition to requirements in paragraph (a) of this section, OEDPs for districts must contain the following:

(1) Proposed designation or recognition of at least one growth center; and

(2) Description of the role of the proposed center in implementing the district wide development program, particularly as it relates to redevelopment areas.

§ 303.5 Approval process for initial OEDPs.

(a) The completed initial OEDP must be reviewed and commented upon by appropriate:

(1) Governmental bodies;

(2) Interest groups; and

(3) EDA Regional Office.

(b) If the OEDP is approved, copies must be made available to interested parties by the designated area or district.

(c) If the initial OEDP is inadequate, the EDA Regional Office will contact the chairman of the OEDP committee by letter stating deficiencies and allowing additional time for corrections to be made and reviewed by EDA.

§ 303.6 The continuing program.

(a) After designation by EDA the area or district shall implement the development program as updated and made known to EDA through annual reports or revised OEDPs.

(b) No financial assistance for a designated area or district will be awarded if it:

(1) Has not submitted a timely annual report;

(2) Has submitted a deficient annual report; or

(3) Has not corrected noted deficiencies.

(c) Revised OEDPs.

(1) A revised OEDP will be required if EDA determines that the initial OEDP of the area or district is inadequate, or outdated.

(2) The area or district may choose to revise its initial OEDP if the OEDP committee determines that a complete reassessment of the local situation or a complete reassessment of the economic development program is desirable.

(3) A revised OEDP may be submitted in lieu of the annual OEDP progress report.

(4) Before any revised OEDP for a district is approved by EDA, it shall be reviewed by appropriate:

(i) Governmental bodies;

(ii) Interest groups; and

(iii) EDA Regional Office.

PART 304—GENERAL SELECTION PROCESS AND EVALUATION CRITERIA

Sec.

304.1 General selection process and evaluation criteria for programs under PWEDA.
304.2 Demonstration project assistance under Section 301(f) of PWEDA.

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

§ 304.1 General selection process and evaluation criteria for programs under PWEDA.

EDA has established a streamlined and uniform selection process based upon a short proposal and standardized application form with attachments as applicable to each particular program. Additional information if any, is set forth in program specific parts/sections. EDA applies uniform evaluation criteria to all programs, as well as evaluation criteria which are set forth in parts 305, 307 and 308 of this chapter.

(a) The selection process is described as follows:

(1) For projects to be funded under parts 305, 307 and 308 of this chapter proponents will submit forms to EDA during the selection process as follows:

(i) There will be a brief proposal consisting of the face sheet (SF–424) and two additional pages, including for example, budget, scope of work and capability statements.

(ii) There will be a standard application for all programs which will include an additional attachment for each program as appropriate.

(2) For projects to be funded under part 307—Subparts A, B, E and F and parts 305 and 308 of this chapter, requirements are as follows:

(i) Initial contact with EDA will generally be through contact with the appropriate Economic Development Representative (EDR) (see § 300.4 of this chapter) who will provide assistance as needed in filling out the proposal as described in paragraph (a)(1) of this section.

(ii) Generally, an EDR will evaluate proposals under § 304.1(b) before submitting them to the EDA Regional Office for review by a project review committee (of at least three EDA officials).

(iii) If the proposal is acceptable under § 304.1(b), EDA may invite the submission of an application.

(iv) An invitation to submit an application does not assure EDA funding.

(v) Applications are generally to be submitted within 30 days after receipt of an invitation letter.

(3) For projects to be funded under part 307—Subparts C and D of this chapter, requirements are as follows:

(i) Initial contact by proponents for information and assistance concerning proposals will generally be with Washington, DC, at locations noted in §§ 307.13 and 307.18 of this chapter.

(ii) Generally, proposals will be reviewed for relevance and quality by three or more technically knowledgeable EDA officials.

(iii) If the proposal is acceptable under § 304.1(b), EDA may invite proponents to submit applications.

(iv) An invitation to submit an application does not assure EDA funding.

(v) Applications are generally to be submitted within 30 days after receipts of an invitation letter.

(b) General evaluation criteria for projects to be funded under parts 305, 307 and 308 of this chapter in addition to criteria noted in such parts, are as follows: All proposals/applications will be screened for conformance to statutory and regulatory requirements, the relative severity of the economic problem of the area, the quality of the scope of work proposed to address the problem, the merits of the activity(ies) for which funding is requested, and the ability of the prospective applicant to carry out the proposed activity(ies) successfully.

§ 304.2 Demonstration project assistance under Section 301(f) of PWEDA.

In addition to the selection of projects under the general selection process as set forth in § 304.1 above, EDA may also select demonstration projects, as authorized under section 301(f) of PWEDA. Demonstration projects involve the provision of funds, through grants, loans or otherwise, to carry out the purpose of PWEDA. There are no set forms or procedure for project selection, and proposals may be submitted to EDA at any time. Demonstration projects must be within redevelopment areas.

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

Subpart A—General

Sec.

305.1 Purpose and scope.
305.2 Applicants.
305.3 Eligibility requirements.
305.4 Project requirements.
305.5 Selection process.
305.6 Evaluation criteria.
305.7 Award requirements.

Subpart B—Supplementary and Overrun Grants

305.8 Supplementary grants.
305.9 10 percent bonus supplemental grants.
305.10 Grants for construction cost increases.
305.11 Disbursements of funds for grants.
305.12 Variance in cost of grant projects.
305.13 Amendments and changes.
305.14 Final inspection.
305.15 Contract and subcontract clauses.

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

Subpart A—General

§ 305.1 Purpose and scope.

The purpose of the Public Works Program is to assist communities with the funding of public works and development facilities that contribute to the creation or retention of primarily private sector jobs and alleviation of unemployment and underemployment. Such assistance is designed to help communities achieve lasting improvement by stabilizing and diversifying local economies and by improving local living conditions and the economic development of the area. Alleviation of unemployment and underemployment among residents of the project area is a primary focus of this program.

§ 305.2 Applicants.

Eligible applicants under this program include:

(a) States, or political subdivisions thereof;

(b) American Indian tribes;

(c) The Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands; and

(d) A private or public non-profit organization or association representing any redevelopment area or part thereof, provided the EDA project is located within an eligible EDA area represented by such non-profit organization or association.

(e) When the applicant is not a State, American Indian tribe or other general-purpose governmental authority, the applicant must afford the appropriate local governmental authority of the area a minimum of 15 days in which to review and comment on the proposed project. The applicant shall furnish with the application a copy of such comments, or a statement of the efforts made to obtain them together with an explanation of the actions taken to address any comments received.

§ 305.3 Eligibility requirements.

(a) Other than those areas designated under PWIP, applicant areas, including Special Impact Areas (SIAs) must have a current EDA approved Overall Economic Development Program (OEDP).

(b) Political entities claiming eligibility under OEDPs developed by multicounty economic development organizations are expected to continue to participate actively in the organization.

(c) Non-profit organizations or associations must meet the following requirements:

(1) Such non-profit organizations or associations must represent a redevelopment area or part thereof, if EDA determines that such applicant is potentially capable of furthering the objectives of the economic development program of the area in which it is located;

(2) To the extent possible, non-profit applicants are urged to seek the cooperation and support of units of local government; and

(3) When deemed appropriate by EDA, have the local government as co-applicant for EDA assistance. This ensures the financial stability and continuity of the project in the event that the non-profit entity finds itself in a position of not having the financial resources to administer, operate, and maintain the EDA assisted facility in a proper and efficient manner consistent

with the provisions of part 314 of this chapter.

§ 305.4 Project requirements.

(a) Public works projects other than PWIP projects must meet the following requirements:

(1) Be consistent with the EDA approved OEDP for the area in which it is or will be located, and have broad community support;

(2) Improve opportunities for the successful establishment or expansion of industrial or commercial facilities in the area where such project will be located;

(3) The project will not result in the increase of goods or services beyond the demand for such goods or services existing or to be created in the market area;

(4) The project fulfills a pressing need of the area or part thereof, in which it is located;

(5) There is adequate local matching share; and

(6) The project benefits the long-term unemployed and members of low-income families who are residents of the area to be served.

(b) PWIP projects must create immediate useful work for the unemployed and underemployed residents in the project area.

§ 305.5 Selection process.

Projects will be selected in accordance with § 304.1 of this chapter.

§ 305.6 Evaluation criteria.

In addition to and/or as an elaboration of the evaluation criteria set forth in part 304 of this chapter of this chapter and to the extent practicable, evaluations are made on the basis of whether the proposed project:

(a) Assists in creating or retaining private sector jobs (primarily in the near term) and assists in the creation of additional long-term employment opportunities (provided the jobs have not been transferred from another commuting area of the United States) and will result in low costs-per-job in relation to total EDA costs, evidenced for example by:

(1) Commitments to create such jobs;

(2) Marketing; and

(3) Financial capabilities of the applicant.

(b) Is supported by significant private sector investment.

(c) Maximizes the amount of local, state or other Federal funding that is available.

(d) Is likely to be started and completed in a timely fashion.

(e) If located in an EDC with a stable economy and little distress, an employment plan is required that explains how new employment opportunities for residents of nearby highly distressed redevelopment areas will be provided.

(f) To the extent possible, factors that will be considered in the evaluation of PWIP projects include whether the proposed project:

(1) Improves the economic or community environment in areas of severe economic distress;

(2) Includes an acceptable plan for hiring the unemployed and underemployed from the project area to work on construction of the project;

(3) Assists in providing long-term employment opportunities or other economic benefits for the unemployed and underemployed in the project area;

(4) Primarily benefits low-income families by providing essential community services, or satisfying a pressing public need;

(5) Involves construction which can be started (normally within 120 days after affirmation of the award), and completed quickly (normally within one year) preferably without early construction start; or

(6) Has significant labor intensity (i.e., the proportion of labor costs to the total project costs).

§ 305.7 Award requirements.

(a) Projects are expected to be completed in a timely manner consistent with the nature of the project. Normally, the maximum period for any financial assistance that is provided shall be not more than 5 years from the fiscal year of the award.

(b) Matching Requirements are as follows:

(1) EDA may provide direct grants not to exceed 50 percent of the estimated cost of the project;

(2) Under certain circumstances supplementary grants to augment the direct grant may be provided up to a maximum of 80 percent of the eligible project costs, though waivers may be permitted in accordance with Section 101(c) of the Act. Supplementary grant assistance to finance over 50 percent of the project costs will be approved by EDA only for projects in areas of high distress. Decisions on such supplementary grant assistance will be based on the nature of the project, the amount of fair user charges or other revenues the project may reasonably be expected to generate, and the relative needs of the area;

(3) Applicants are required to provide the local share from acceptable sources;

(4) The local share need not be in hand at the time of application; however, the applicant must assure EDA that such share is committed and will be available at the time the award is accepted; and

(5) The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant.

Subpart B—Supplementary and Overrun Grants

§ 305.8 Supplementary grants.

(a) In the case of projects for which EDA supplements direct grants of other Federal agencies, the total Federal funding may be up to 80 percent of the project's costs (except as allowed by paragraph (b) (1), (2) or (3) of this section).

(b) Based upon the kind of project, the severity of distressed factors and revenue above and beyond the amount needed to amortize the local share, supplemental grants in excess of 50% may be awarded by EDA in accordance with the following Table:

Projects	Maximum grant rates (percent)
(1) Projects of American Indian Tribes which are concerned with general economic development will be given special consideration, and the Assistant Secretary may reduce or waive the non-Federal share for such projects	100
(2) Projects located in redevelopment areas designated under section 401(a)(6) of the act, applied for by States or political subdivision thereof which have demonstrated they have exhausted their effective taxing and borrowing capacity	100
(3) Projects located in redevelopment areas designated under section 401(a)(6) of the Act applied for by community development corporations (as defined in 13 CFR 300.2) which have demonstrated they have exhausted their effective borrowing capacity	100
(4) Projects located in redevelopment areas designated under section 401(a)(6) of the Act as special impact areas and which were not designated under section 401(a)(6) as a result of the October 12, 1976 amendment of section 401(a)(8) of the Act, but which cannot meet the requirement of paragraph (b)(2) of this section	80

Projects	Maximum grant rates (percent)
(5) Projects located in areas designated under Title IV of the Act which have been declared disaster areas by the President of the United States under the Disaster Relief and Emergency Assistance Act (Pub. L. 100–707) as amended provided:	
(i) Such areas retain their EDA designations, and	
(ii) No more than one year has elapsed since the date of such area's disaster area designation	80
(6) Projects located in areas designated under Title IV of the Act in which the median annual family income is $7,412 or below, or the average unemployment rate for the preceding 24 months is 12 percent or higher	80
(7) Projects located in areas designated under Title IV of the act in which the median annual family income is $7,413 to $8,261, or the average unemployment rate for the preceding 24 months is 10 percent to 11.9 percent	70
(8) Projects located in areas designated under Title IV of the Act in which the median annual family income is $8,262 to $9,110, or the average unemployment rate for the preceding 24 months is 8 percent to 9.9 percent	60
(9) Projects located in areas designated under section 401(a)(6) of the Act solely on the basis of the October 12, 1976 amendment of section 401(a)(8) of the Act by Pub. L. 94–487	50
(10) Projects in all other areas	50

(c) The applicable maximum grant eligibility rate for projects located in EDDs pursuant to section 403(j) of the Act shall be the same as the grant rates for the redevelopment areas for which such projects are determined to be a direct and substantial benefit.

(d) Notwithstanding paragraph (c) of this section, an applicant shall be eligible for the highest applicable maximum grant rate in effect between the time EDA invites the application and the time the project is approved.

(e) Where municipalities of over 25,000 population qualify for designation under Title IV of the Act and part 302 of this chapter, but are located in areas already designated thereunder, such municipalities are eligible for the maximum grant under paragraph (b) of this section as if they were designated independent of the existing redevelopment area. In determining the maximum grant rate for such municipalities, EDA will use the appropriate statistical information for the municipality involved, provided that consideration of such information will work to the municipality's advantage.

§ 305.9 Ten percent bonus supplemental grants.

(a) Subject to the limitation that the maximum Federal share for any project may not exceed 80 percent of the aggregate project cost or 100 percent for projects listed in § 305.8(b)(1)–(3), EDA may increase the amount of grant assistance for projects within redevelopment areas by an amount not to exceed 10 percent of the aggregate cost of any such project if:

(1) The redevelopment area is situated within a designated economic development district (EDD) and is actively participating in the economic development activities of the district; and

(2) The project is consistent with a currently approved district OEDP.

(b) Projects assisted in districts outside redevelopment areas pursuant to section 403(j) of the Act shall not be eligible for 10 percent bonus grants under this section.

§ 305.10 Grants for construction cost increases.

(a) For the purposes of this section, *construction cost increases* means those costs which the applicant incurs or will incur in completing the project according to the original designs and specifications beyond the project costs set forth in the grant agreement.

(b) EDA may increase the amount of any grant made under the authority of Title I of the Act when the following conditions are met:

(1) The project is being or will be constructed in accordance with the original designs and specifications or in accord with final plans and specifications which reflect the original intent and purpose;

(2) The project's total cost has increased because of increases in costs based on the original designs and specifications (or based on final plans and specifications reflecting the original intent and purpose); and

(3) The project has incurred construction cost increases after the grant was made but prior to completion of the project.

(c) Limitations on amount of grants are as follows:

(1) The amount of a grant made under paragraph (b) of this section may be equal to an amount based on the percentage increase in the costs referred to in paragraph (b)(2) of this section, as determined by EDA; and

(2) A grant for construction cost increases may not be in an amount which would cause the Federal share of the project's costs to exceed the percentage originally provided for in the grant agreement.

§ 305.11 Disbursements of funds for grants.

(a) Though disbursements of funds for grants are generally made upon application for reimbursement, advances of funds are allowable at the discretion of EDA. Disbursements will be made when the following conditions have been met:

(1) After execution of all contracts required for the completion of the project. This condition may be waived by EDA if the grantee can demonstrate that enforcement of the condition would place an undue burden on it;

(2) For itemized and certified eligible costs incurred, as substantiated by such documentary evidence as EDA may require;

(3) For the percentage of EDA participation, but in no event for more than the total sum stated in the financial assistance award accepted by the grantee;

(4) Upon such evidence as EDA may require that grantee's proportionate share of funds is on deposit;

(5) After a determination by EDA that all applicable conditions of the grant have been met; and

(6) After meeting such other requirements as EDA shall establish.

(b) Disbursements are generally made in installments, based upon grantee's actual rate of disbursement in accordance with the grant rate.

§ 305.12 Variance in cost of grant projects.

(a) If the total eligible costs are equal to or exceed the amount stated in the financial assistance award, disbursements will be the amount identified in the financial assistance award.

(b) If the total eligible project costs are less than the amount stated in the financial assistance award, the disbursements will be determined by multiplying the total eligible project costs by the grant rate percentage.

(c) The grant rate percentage is determined by dividing the total

estimated project costs stated in the financial assistance award into the amount of EDA funding provided in the grant. For example, if the financial assistance award states that EDA will provide $50,000 for a project estimated to cost $100,000, the grant rate is 50% ($50,000 divided by $100,000). If the actual eligible project costs were $100,000, EDA would provide $50,000. If the actual eligible project costs were $120,000, EDA would still provide $50,000. If the actual eligible project costs were only $80,000, EDA would provide $40,000 (50% x $80,000).

§ 305.13 Amendments and changes.

(a) Requests by grantees for amendments to a grant shall be submitted in writing to the EDA Regional Office for processing, and shall contain such information and documentation necessary to justify the request.

(b) All change orders are subject to EDA approval. Any changes made without prior approval by EDA are made at grantee's own risk of suspension or termination of the project.

(c) Changes of project scope will not be approved by EDA.

§ 305.14 Final inspection.

A final inspection will be scheduled by the grantee, with EDA concurrence and/or participation, when the project has been completed and is functional and when all deficiencies have been corrected.

§ 305.15 Contract and subcontract clauses.

Grantees must see that grantees' and subgrantees' contracts contain all required clauses in accordance with 15 CFR part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Non-profit Organizations, whichever is applicable.

PART 306—[RESERVED]

PART 307—LOCAL TECHNICAL ASSISTANCE, UNIVERSITY CENTER TECHNICAL ASSISTANCE, NATIONAL TECHNICAL ASSISTANCE, RESEARCH AND EVALUATION AND PLANNING

Subpart A—Local Technical Assistance

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Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

Subpart A—Local Technical Assistance

§ 307.1 Purpose and scope.

Funds are awarded to eligible applicants to support the initiation and implementation of area, state, and regional development efforts designed to alleviate economic distress. This program is designed to help economically distressed areas to address local economic development problems through specific project efforts.

§ 307.2 Applicants.

Eligible applicants for Local Technical Assistance grants or cooperative agreements include:

(a) Public or private non-profit organizations;

(1) National, state, area, district, or local organizations; and/or

(2) Accredited educational institutions or non profit entities representing them.

(b) Public sector organizations;

(1) American Indian tribes;

(2) Local governments; and

(3) State agencies.

(c) Other applicants such as private individuals, partnerships, firms, and corporations may be considered if the general public will benefit from the project. Technical assistance grant funds may not be used to start or expand a private business.

§ 307.3 Selection process.

Projects will be selected in accordance with § 304.1 of this chapter.

§ 307.4 Evaluation criteria.

In addition to and/or as an elaboration of evaluation criteria set forth in part 304 of this chapter and to the extent practicable, evaluation criteria should include whether the project:

(a) Strengthens the capability of state and local organizations and institutions, including non-profit development groups, to undertake and promote effective economic development programs targeted to people and areas of distress;

(b) Benefits distressed areas;

(c) Diversifies distressed economies;

(d) Demonstrates innovative approaches to stimulating economic development in depressed areas;

(e) Is consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which the project is located; and

(f) Presents a reasonable, itemized budget.

§ 307.5 Award requirements.

(a) Assistance will be for the period of time required to complete the scope of the work. This typically does not exceed twelve months.

(b) EDA will provide grants and cooperative agreements not to exceed 75 percent of the proposed project costs. Applicants are expected to provide the remaining share. EDA may waive all or part of the 25 percent share of technical assistance grants if it determines that the nonfederal share is not reasonably available because of the critical nature of the situation requiring technical assistance, or for other good causes.

(c) Quarterly financial reports, semi-annual progress reports and project products will be specified in the Special Award Conditions of the grant.

Subpart B—University Center Program

§ 307.6 Purpose and scope.

Funds under the University Center Technical Assistance Program help institutions of higher education in using their own and other resources to address the economic development problems and opportunities of their service area. The University Center Technical Assistance Program is designed to help

in improving the economies of distressed areas.

§ 307.7 Applicants.

Eligible applicants for University Center Technical Assistance grants or cooperative agreements include public and private accredited educational institutions and non-profit entities representing them. In certain circumstances, other applicants proposing projects that benefit the University Center Technical Assistance Program may be considered.

§ 307.8 Selection process.

(a) Projects will be selected in accordance with § 304.1 of this chapter.

(b) The concurrence of EDA in Washington, DC, is required for the selection of all new University Centers.

§ 307.9 Evaluation criteria.

In addition to and/or as an elaboration of evaluation criteria set forth in part 304 of this chapter and to the extent practicable, evaluation criteria include whether the project:

(a) Has the commitment of the highest management levels of the sponsoring institution;

(b) Provides evidence of adequate nonfederal financial support, either from the sponsoring institution or other sources;

(c) Outlines activities consistent with the expertise of the proposed staff, the academic programs, and other resources available within the sponsoring institution;

(d) Presents a reasonable budget;

(e) Documents past experience of the sponsoring institution in operating technical assistance programs; and

(f) Adds to the geographic distribution of University Centers across the country.

§ 307.10 Award requirements.

(a) Assistance will be for the period of time required to complete the scope of the work. This typically does not exceed twelve months.

(b) EDA will provide grants and cooperative agreements not to exceed 75 percent of the proposed project costs. Applicants are expected to provide the remaining share. EDA may waive all or part of the 25 percent share of technical assistance grants if it determines that the nonfederal share is not reasonably available because of the critical nature of the situation requiring technical assistance or for other good cause.

(c) Indirect costs are limited to 20 percent of the Federal and nonfederal shares. EDA encourages applicants to absorb all indirect costs for this program.

(d) Quarterly financial reports, semi-annual progress reports and project products will be specified in the Special Award Conditions of the grant.

Subpart C—National Technical Assistance

§ 307.11 Purpose and scope.

Funds under the National Technical Assistance Program are awarded to assure the successful initiation and implementation of development efforts designed to alleviate economic distress. This program is designed to help alleviate or prevent conditions of excessive unemployment or underemployment and problems of economically distressed areas.

§ 307.12 Applicants.

Eligible applicants for National Technical Assistance grants or cooperative agreements include:

(a) Public or private non-profit organizations, including:

(1) Non-profit national, state, area, district, or local organizations; and

(2) Accredited educational institutions or non-profit entities representing them;

(b) Public sector organizations and Native American organizations, including:

(1) American Indian tribes;

(2) Local governments; and

(3) State agencies.

(c) Other applicants such as private individuals, partnerships, firms, and corporations may be considered if the general public will benefit from the project. Technical assistance grant funds may not be used to start or expand a private business.

§ 307.13 Selection process.

(a) Projects will be selected in accordance with § 304.1 of this chapter.

(b) EDA may, during the course of the year, identify specific economic development technical assistance activities it wishes to have conducted. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such work should submit information on their capabilities and experience to the Director, Technical Assistance and Research Division, Economic Development Administration. See part 300 of this chapter.

§ 307.14 Evaluation criteria.

In addition to and/or as an elaboration of the evaluation criteria described in part 304 of this chapter and to the extent practicable, evaluation criteria include whether the project:

(a) Does not depend upon further EDA or other Federal funding assistance to achieve results;

(b) Strengthens the capability of state and local organizations and institutions, including non-profit development groups, to undertake and promote effective economic development programs targeted to people and areas of distress;

(c) Benefits severely distressed areas including both rural and urban counties and communities;

(d) Diversifies distressed economies;

(e) Demonstrates innovative approaches to stimulating economic development in depressed areas; and

§ 307.15 Award requirements.

(a) Assistance will be for the period of time required to complete the scope of the work. This typically does not exceed twelve months.

(b) EDA will provide grants and cooperative agreements not to exceed 75 percent of the proposed project costs. Applicants are expected to provide the remaining share. EDA may waive all or part of the 25 percent share of technical assistance grants if it determines that the nonfederal share is not reasonably available because of the critical nature of the situation requiring technical assistance or for other good cause.

(c) Quarterly financial reports, semi-annual progress reports and project products will be specified in the Special Award Conditions of the grant.

Subpart D—Research and Evaluation

§ 307.16 Purpose and scope.

The purposes of research and evaluation of projects are as follows:

(a) To determine the causes of unemployment, underemployment, underdevelopment, and chronic depression in various areas and regions of the Nation;

(b) To assist in the formulation and implementation of national, state, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions; and

(c) To evaluate the effectiveness of programs, projects, and techniques used to alleviate economic distress and promote economic development.

§ 307.17 Eligible applicants.

Eligible applicants for Research and Evaluation grants or cooperative agreements include:

(a) Private individuals;

(b) Partnerships;

(c) Corporations;

(d) Associations;

(e) Colleges and universities; and

(f) Other suitable organizations with expertise relevant to economic

development research. Research funds may not be used to start or expand a private business.

§ 307.18 Selection process.

(a) Projects will be selected in accordance with § 304.1 of this chapter.

(b) EDA may use solicitations of applications as follows: EDA may identify particular projects, including program evaluations it wishes to have conducted. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such studies should submit information on their capabilities and experience. See § 300.4 of this chapter.

§ 307.19 Evaluation criteria.

In addition to and/or as an elaboration of the evaluation criteria set forth in part 304 of this chapter and to the extent practicable, EDA will use the following criteria to evaluate research and evaluation proposals:

(a) Suitability of the subject;

(b) Potential usefulness of the research to state and local economic development officials and specialists;

(c) General quality and clarity of the proposal;

(d) Soundness and completeness of the research methodology; and

(e) Total cost and value of proposed product in relation to cost.

§ 307.20 Research topics and structure.

(a) EDA is interested in receiving proposals dealing with:

(1) Employment and unemployment;

(2) Income and poverty;

(3) Rural and nonmetropolitan economic development;

(4) Urban economic development; or

(5) Regional and local growth and competitiveness.

(b) Requests should be for specific, well-defined, one-time research projects. EDA research grants are not intended for support of continuing programs (permanent research programs, publication and information programs, periodic forecasts, etc.), or for nonresearch activities.

(c) EDA normally prefers research of broad geographic scope covering the whole country or a large multistate region, as opposed to research covering in declining order of preference:

(1) A small multistate region;

(2) A state;

(3) A multicounty area; or

(4) A single city or county.

(d) Preference will normally be given to practical cause-and-effect research (including hypothesis testing models) and descriptive analyses, as opposed to theoretical studies, forecasting models, and ''how to'' guides.

(e) The NOFA may announce additional areas of special research interest for that year.

§ 307.21 Award requirements.

(a) Assistance under this program will normally be for a period not exceeding 15 months.

(b) EDA will provide grants and cooperative agreements covering up to 100 percent of project costs.

Subpart E—Economic Development Districts, American Indian Tribes and Redevelopment Areas Economic Development Planning Grants

§ 307.22 Purpose and scope.

The primary objective of planning assistance for administrative expenses is to support the formulation and implementation of economic development planning programs designed to create or retain permanent jobs and income, particularly for the unemployed and underemployed in the most distressed areas. Planning activities supported by these administrative funds must be part of a permanent and continuous process involving significant leadership by public officials and private citizens.

§ 307.23 Definition.

(a) Category A grants means those made to Economic Development Districts and Redevelopment Areas; and

(b) Category B grants means those made to American Indian Tribes.

§ 307.24 Applicants.

Eligible applicants are economic development district organizations, redevelopment areas, organizations representing redevelopment areas (or parts of such areas), American Indian tribes, organizations representing multiple American Indian tribes, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 307.25 Selection process.

EDA invites currently funded grantees to apply if they are in compliance with their current financial assistance awards. EDA will select projects in accordance with § 304.1 of this chapter.

§ 307.26 Evaluation criteria.

(a) In addition to and/or as an elaboration of the evaluation criteria set forth in part 304 of this chapter and to the extent practicable, EDA will evaluate applicants on the following:

(1) Quality of the proposed work program;

(2) Management and staff capacity and qualifications;

(3) Involvement of the local leadership in the applicant's economic development activities; and

(b) Previously funded grantees, in addition to the requirements of paragraph (a) of this section, will be evaluated on the basis of the quality of their past performance.

§ 307.27 Award requirements.

(a) Assistance will normally be for a 12-month period.

(b) Grant assistance may be provided for up to 75 percent of project costs for Category A grants with the applicant required to provide the remaining share from non-federal sources. Category B grant assistance may be provided for up to 100 percent of project costs.

(c) EDA will make annual determinations of satisfactory performance, and periodically conduct on-site performance appraisals.

§ 307.28 Limitations.

(a) Except as set forth in paragraph (b) of this section, no planning grants to economic development district organizations will be extended unless at least three-fourths of the counties within the district boundaries indicate, by resolution or other appropriate document, their commitment to support the activities of the district.

(b) Where a sufficient number of counties have withdrawn from the district to make compliance with this three-fourths requirement impossible or unreasonable, EDA may fund the continuing committed counties in the name of the original district organization if EDA determines that the remaining counties can meet the requirements for authorizing and designating economic development districts, as set forth at part 302 of this chapter.

Subpart F—State and Urban Economic Development Planning Grants

§ 307.29 Purpose and scope.

Planning assistance is to strengthen significant economic development planning capability and initiatives of eligible applicants to ensure a more productive use of available resources in reducing the effects of economic problems by formulation and implementation of an economic development program. Assistance must be part of a continuous process involving significant local leadership from public officials and private citizens and should include efforts to reduce

unemployment and increase incomes. These efforts should be systematic and coordinated when applicable, with other planning organizations in the area, and should strengthen the planning capabilities of applicants.

§ 307.30 Applicants.

Eligible applicants under this program are as follows:

(a) Governors or agencies so designated by Governors of States;

(b) Chief executive officers of cities or counties, or their designated agencies or organizations; and

(c) Sub-state planning and development organizations (including redevelopment areas and economic development districts).

§ 307.31 Selection process.

Projects will be selected in accordance with § 304.1 of this chapter.

§ 307.32 Evaluation criteria.

In addition to and/or as an elaboration of the evaluation criteria set forth in part 304 of this chapter and to the extent practicable, EDA will evaluate projects on the following:

(a) Overall quality of the proposal;

(b) Extent to which the proposed planning activities are expected to:

(1) Impact upon the service area's economic development needs; and

(2) Address the problems of the unemployed and underemployed of the area, including minorities, workers displaced by plant closings, etc.;

(c) The proximity of the performing office to the chief executive (i.e., likelihood that the activities will have a significant influence on the policy and decision making process);

(d) Past performance of currently or formerly funded grantees, when applicable;

(e) The amount of local participation provided as matching share to the Federal funds; and

(f) Other characteristics, such as involvement of the private sector businesses and professional groups in the proposed activities, and particularly for states, the innovativeness of the proposed approach and replicability of the model process or results.

§ 307.33 Award requirements.

(a) Assistance will be for the period of time required to complete the work. This period is normally 12 to 18 months.

(b) Grant assistance may be provided for up to 75 percent of project costs. Applicants will be required to provide the remaining share, preferably in cash.

PART 308—REQUIREMENTS FOR GRANTS UNDER THE TITLE IX ECONOMIC ADJUSTMENT PROGRAM

Sec.

308.1 Purpose and scope.
308.2 Use of economic adjustment grants.
308.3 Eligible applicants.
308.4 Eligible areas.
308.5 Selection process.
308.6 Evaluation factors.
308.7 Award requirements.

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

§ 308.1 Purpose and scope.

(a) The Economic Adjustment Program addresses the particular needs of areas experiencing changes in their economic situation which are causing, or threaten to cause, serious structural damage to the underlying economic base. Such changes may occur suddenly or over time, for example, as a result of industrial or corporate restructuring in response to technological advancements or changes in the marketplace, new Federal laws or requirements, reductions in defense expenditures, or depletion of natural resources or natural disasters.

(b) Economic Adjustment grants are awarded for the purpose of enabling communities in such areas to meet the challenge of economic change more effectively through the development and implementation of strategies for inducing capital investment in production of the types of goods and/or services for which the community may have or be able to develop a comparative economic advantage, and which will lead to economic recovery and saving and/or creating permanent jobs.

(c) Overall funding objectives of this program are to:

(1) Provide impacted communities with the skills and knowledge needed to organize and carry out a strategic planning process focusing on increasing the productivity and competitiveness of a community's assets, such as for example, existing industries and business acumen, natural resources, or labor force skills;

(2) Expand the capacity of public officials and development organizations to work more effectively with their business community to identify and address unmet needs of the types of firms identified in area strategies. Such needs include, for example, management assistance and information to help with modernization, financing, market research, and new product development;

(3) Assist communities to overcome critical impediments to implementing their adjustment strategy. Such impediments include, for example, a lack of available financing for the businesses or weaknesses in economic infrastructure;

(4) Enable communities to plan and coordinate:

(i) The use of Federal, and/or other resources available to support economic recovery from Federal actions adversely affecting a major industrial sector;

(ii) The economy of a discrete geographic region; or

(iii) Recovery from natural disasters.

(5) Encourage the development of innovative public/private approaches to economic restructuring and revitalization.

§ 308.2 Use of economic adjustment grants.

(a) Grants shall be used to develop or implement economic adjustment strategies. Strategy grants provide the resources for organizing and conducting a strategic planning process. Implementation grants support one or more activities identified in an adjustment strategy approved by EDA. Such activities include the following, which may be undertaken singly or in combination:

(1) Infrastructure improvements, such as for example, acquisition, site preparation, construction, rehabilitation and/or equipping of eligible facilities;

(2) Provision of business financing through establishment of locally administered revolving loan funds (RLFs);

(3) Planning, including strategy development, updating or refinement;

(4) Market or industry research and analysis;

(5) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or for feasibility studies;

(6) Public Services;

(7) Training; and

(8) Other activities as justified by the economic adjustment strategy which meet statutory and regulatory requirements.

(b) Adjustment grants may be disbursed by the grantee through direct expenditures or through redistribution by them to public and private entities.

(1) Redistribution in the form of grants may only be to units of government or to public or private non-profit organizations.

(2) Redistribution in the form of loans, loan guarantees or other appropriate assistance may be to public or private entities.

§ 308.3 Eligible applicants.

Eligible applicants within areas meeting the EDA eligibility criteria described below include:

(a) A redevelopment area or economic development district established under Title IV of the Act;

(b) An American Indian tribe;

(c) A State;

(d) A city or other political subdivision of a state;

(e) A consortium of such political subdivisions;

(f) A Community Development Corporation;

(g) A non-profit organization determined by EDA to represent the interests of a redevelopment area(s) or economic development districts with respect to the objectives of the Economic Adjustment program; and

(h) The Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 308.4 Eligible areas.

(a) *General.* The area(s) to be assisted by the applicant must be eligible on the basis of the criteria described below for establishing that it is experiencing either Long-Term Economic Deterioration (LTED) or a Sudden and Severe Economic Dislocation (SSED) or a Special Need.

(b) *LTED.* The area must be experiencing at least one of three economic problems:

(1) Very high unemployment;

(2) Low per capita income; or

(3) Chronic distress (i.e., failure to keep pace with national economic growth trends over the last 5 years). Priority consideration will be given to those areas with two or more of these indicators. Eligibility is generally determined statistically. Further information is available from EDA's regional offices and EDRs (see § 300.4 of this chapter).

(c) *SSED.* The area must show actual or threatened permanent job losses that exceed the following threshold criteria:

(1) For areas not in Metropolitan Statistical Areas:

(i) If the unemployment rate of the Labor Market Area exceeds the national average, the dislocation must amount to the lesser of 2 percent of the employed population, or 500 direct jobs; and

(ii) If the unemployment rate of the Labor Market Area is equal to or less than the national average, the dislocation must amount to the lesser of 4 percent of the employed population, or 1,000 direct jobs.

(2) For areas within Metropolitan Statistical Areas:

(i) If the unemployment rate of the Metropolitan Statistical Area exceeds the national average, the dislocation must amount to the lesser of 0.5 percent of the employed population, or 4,000 direct jobs; and

(ii) If the unemployment rate of the Metropolitan Statistical Area is equal to or less than the national average, the dislocation must amount to the lesser of 1 percent of the employed population or 8,000 direct jobs.

(3) In addition, 50 percent of the job loss threshold must result from the action of a single employer, or 80 percent of the job loss threshold must occur in a single standard industry classification (i.e., two digit SIC code).

(4) Actual dislocations must have occurred within one year and threatened dislocations must be anticipated to occur within 2 years of the date EDA is contacted.

(5) In the case of a Presidentially declared disaster, the area eligibility criteria findings are waived.

(d) *Special need.* An area must be determined by EDA to require assistance for another kind of economic adjustment problem or problems.

§ 308.5 Selection process.

(a) Projects will be selected in accordance with § 304.1 of this chapter.

(b) Applicants for funding of a Revolving Loan Fund (RLF) are generally required to submit a RLF Plan in addition to the adjustment strategy for the area. Guidelines on RLFs are available from the Regional Offices. (See part 300 of this chapter).

§ 308.6 Evaluation factors.

(a) *General.* EDA will use the evaluation criteria set forth in part 304 of this chapter. To the extent practicable, EDA will use the evaluation factors set out in this section in the selection process:

(b) *Strategy grants.* EDA will review strategy grant applications to determine whether:

(1) The applicant organization has the necessary authority, mandate and capacity to lead and manage the planning process and implementation of the resulting strategy;

(2) The planning process provides for the representation of public and private sector entities with a contribution to make to the development of the strategy and/or on which accomplishment of the strategic objectives will depend. These entities include public program and service providers, trade and business associations, educational and research institutions, and community development corporations, etc.; and

(3) The proposed scope of work focuses on the specific economic problems to be addressed and provides for undertaking the appropriate research and analysis needed to formulate a realistic, market-based, adjustment strategy.

(c) *Implementation grants.* EDA will review implementation grant applications to determine whether:

(1) Strategies have been completed; provided however, that EDA may in some instances, consider funding a project prior to completion of the strategy/plan, if:

(i) An appropriate community planning process is underway;

(ii) Sufficient analysis has been done to show that the proposed project is economically viable and potentially consistent with the evolving strategy; and

(iii) The proposed project has the support of the community.

(2) Activities or projects proposed for funding are generally identifiable as integral and priority elements within an adjustment strategy for the eligible area(s) prepared or updated within the preceding 2 years;

(3) The strategy addresses the following:

(i) An appropriately designed and conducted planning process;

(ii) An understanding of the economic problems being addressed;

(iii) An analysis of the industry sectors and the firms within them that comprise the area's economic base, and of the particular strengths and weaknesses of the area that contribute to, or detract from, its current and potential economic competitiveness;

(iv) Strategic objectives that flow from the economic analysis and conclusions and focus on stimulating investment in new and/or expanding economic activities that offer the best prospects for revitalization and growth;

(v) Appropriate and necessary resources in the area and elsewhere which have been identified and are/will be coordinated to support implementation of the strategy; and

(vi) The performance measures which the applicant will use to assess progress toward accomplishing its strategic objectives.

(4) All individual activities or projects proposed for funding are consistent with one or more of the Economic Adjustment Program objectives stated in § 308.1.

(d) *Revolving Loan Fund grants.* For implementation grants proposing to capitalize or recapitalize a Revolving Loan Fund (RLF), EDA will also review how the application discusses:

(1) The need for a new or expanded public financing tool to complement

other business assistance programs and services available to firms and/or would-be entrepreneurs in industry sectors and/or locations targeted by the adjustment strategy;

(2) The types of financing activities anticipated; and

(3) The prospective capacity of the RLF's organization to work effectively with the business community and other financing providers, to function as an integral part of the overall economic adjustment effort and to manage the lending function.

§ 308.7 Award requirements.

(a) Projects are expected to be completed in a timely manner consistent with the nature of the project. However, the maximum period for which assistance will be available shall not be more than 5 years from the fiscal year of award.

(b) Title IX funds are awarded through grants generally not to exceed 75 percent of the project cost. EDA may waive all or part of the 25 percent nonfederal share of economic adjustment assistance grants, because of the critical nature of the situation requiring economic adjustment assistance, or for other good cause. The local share must not be encumbered in any way that would preclude its use as required by the grant agreement. The local share for grants to establish or recapitalize a RLF must be in cash, and while the local share for grants for other activities may be cash or in-kind, priority consideration will be given to proposals with a cash local share.

(c) Direct recipients of grant assistance shall submit a report to EDA each year that the assistance continues in accordance with the Act. The report shall include:

(1) Whether planned activities are completed or their anticipated completion time;

(2) The degree to which activities have achieved their planned goals as described in the plan; and

(d) RLF grantees must submit semi-annual reports until graduated to annual report status.

PART 309—[RESERVED]

PART 310—[RESERVED]

PART 311—[RESERVED]

PART 312—SUPPLEMENTAL AND BASIC ASSISTANCE UNDER SECTION 304 OF THE ACT

Sec.

312.1 Purpose and scope.
312.2 Selection and qualification of projects for supplementary assistance.
312.3 Selection and qualification of projects for basic grant assistance.
312.4 Award requirements.
312.5 Construction management and disbursement.
312.6 Conditions for disbursement of funds.

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

§ 312.1 Purpose and scope.

The purpose of this part is to set forth requirements governing the extension of assistance under section 304 of the Act (42 U.S.C. 3153). Funds obligated to a State shall be available for supplementing or making grants authorized under Titles I, III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act for projects within such States. The Assistant Secretary has notified the State of amounts available under section 304, if any, for basic and supplemental assistance under this part.

§ 312.2 Selection and qualification of projects for supplementary assistance.

The selection of projects to be assisted by the use of funds in supplementing grants made by EDA under Titles I and III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act shall be made by the States and communicated to EDA on forms prescribed by EDA. Eligibility of a project for assistance shall be determined by EDA incident to the evaluation of the application for the underlying basic grant assistance for such project.

§ 312.3 Selection and qualification of projects for basic grant assistance.

(a) In those cases where the States propose to use funds for basic grant assistance for projects meeting requirements for assistance under Titles I and III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act, and for which funds have been determined to be unavailable by EDA under Titles I, III, IV, and IX, the States shall communicate the proposed use of the funds to EDA on forms prescribed by EDA. A proposal shall contain or be accompanied by the documentation or certification evidencing compliance with the requirements, conditions, and limitations as would be applicable to such project if it were being considered for funding under Titles I and III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act. Eligibility and compliance of a project for assistance shall be determined by EDA in the same manner as applicable to projects receiving only supplementary assistance under section 304 of the Act.

(b) A proposal by a State for the use of funds for a basic grant shall be accompanied by evidence that the principal governing authorities for the area in which a project is to be located have approved the project.

(c) Funds may not be used by a State as a grant to a private profitmaking entity.

§ 312.4 Award requirements.

States must make a contribution which is equal to at least 25 percent of the funds being made available to a particular project from funds appropriated under section 304 of the Act. Participation in or contributions to a project by local subdivisions of a State or private individuals or organizations shall not be deemed contributions by the State as required by this section.

§ 312.5 Construction management and disbursement.

Projects assisted through the use of funds in supplementing EDA grants under Titles I and III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act or in providing basic grants shall be subject to the same procedures and requirements relating to post-approval compliances, construction management, and disbursement as applicable to projects funded under Titles I, III, IV, and IX of the Act.

§ 312.6 Conditions for disbursement of funds.

(a) As a condition for the disbursement of funds, a State shall conform to the requirements of the Act and provide acceptable evidence of compliance with requirements conditions and limitations applicable to projects assisted under Titles I, III (other than planning grants authorized under section 301(b) and 302), IV, and IX of the Act. States will be promptly notified of proposals which do not meet requirements.

(b) It shall also be a condition for the disbursement of funds for any project that the State must make a showing:

(1) That such funds will be used in a manner consistent with the State planning process assisted under part 307 of this chapter if such a planning process has been established;

(2) That such State is not receiving planning assistance under part 307 but has an economic development planning process meeting the standards required for assistance under part 307 of this chapter and that the proposed use of funds is consistent with such planning process; or

(3) That the project is clearly of such nature that EDA may conclude that its implementation would not impair the benefits intended to be derived from an orderly economic development planning process.

PART 313—[RESERVED]

PART 314—PROPERTY MANAGEMENT STANDARDS

Subpart A—In General

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314.9 Recorded statement.
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Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Title II, Chapter 3 of the Trade Act of 1974, as amended (19 U.S.C. 2341–2355); Title I, Pub. L. 94–369, as amended, 90 Stat. 999 (42 U.S.C. 6701); Pub. L. 95–31; 91 Stat. 169 (42 U.S.C. 184); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

Subpart A—In General

§ 314.1 Federal interest, applicability.

(a) All property that is acquired or improved with EDA grant assistance shall be held in trust by the recipient for the benefit of the project purposes under which the property was acquired or improved.

(b) During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance.

(c) EDA may approve the substitution of an eligible entity for a grantee. The original grantee remains responsible for the period it was the grantee, and the successor grantee holds the project property with the responsibilities of an original grantee under the award.

(d) The requirements contained in this part apply solely to grant and cooperative agreement award projects.

§ 314.2 Definitions.

As used in this part 314 of this chapter:

Dispose includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.

Estimated useful life means that period of years from the time of award, determined by EDA as the expected lifespan of the project.

Grantee includes any recipient, subrecipient, awardee, or subawardee of grant assistance under the Public Works and Economic Development Act of 1965, or under Title II, Chapter 3 of the Trade Act of 1974, Title I of the Public Works Employment Act of 1976, the Public Works Employment Act of 1977, or the Community Emergency Drought Relief Act of 1977, and any EDA-approved successor to such recipient, subrecipient, awardee or subawardee.

Owner includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project which has as its purpose that the property be sold.

Personal Property means all property other than real property. Project means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs as provided in § 314.3(b), ''project'' includes such programs.

Property includes all forms of property, real, personal (tangible and intangible), and mixed.

Real property means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of the project purpose.

§ 314.3 Use of property.

(a) The grantee or owner shall use any property acquired or improved in whole or in part with grant assistance only for the authorized purpose of the project as long as it is needed during the estimated useful life of the project and such property shall not be leased, sold, disposed of or encumbered without the written authorization of EDA.

(b) In the event that EDA and the grantee determine that property acquired or improved in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, if EDA approves such use.

(c) When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided the sale is consistent with the authorized purpose of the grant and with applicable EDA requirements concerning, but not limited to, nondiscrimination and nonrelocation.

(d) When acquiring replacement personal property of equal or greater value, the grantee may trade-in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be subject to the same requirements as the original property.

§ 314.4 Unauthorized use.

(a) Except as provided in § 314.3 (b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of without the approval of EDA, or no longer used for the authorized purpose of the project, the Federal Government shall be compensated by the grantee for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR part 24 and OMB Circular A–110 or any supplements or successors thereto, as applicable, shall apply.

(b) If property is disposed of without approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. EDA may pursue its rights under both paragraphs (a) and (b) of this section, except that the total amount to be recovered shall not exceed the Federal share, plus costs and interest.

§ 314.5 Federal share.

(a) For purposes of this part 314, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale).

(b) Where the grantee's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor shall be considered in determining the percentage of the Federal share.

(c) If property is transferred from the grantee to another eligible entity, as provided in § 314.1(c), the Federal government shall be compensated the Federal share of any money paid by or on behalf of the successor grantee to or for the benefit of the original grantee,

provided that EDA may first permit the recovery by the original grantee of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

(d) When the Federal Government is compensated for the Federal share of the value of property acquired or improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use or disposition of the property.

§ 314.6 Encumbrances.

(a) Except as provided in § 314.6(c), grantee-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a mortgage or deed of trust or otherwise be used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project.

(b) Encumbering such property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in §§ 314.4 and 314.5.

(c) EDA may waive the provisions of § 314.6(a) for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the grantee, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The lender/grantor would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/grantee will not default on its obligation.

(d) EDA may waive the provisions of § 314.6(a) as to an encumbrance on property which is acquired and/or improved by an EDA grant when EDA determines that the encumbrance arises solely from the requirements of a pre-existing water or sewer facilities or other utility encumbrance which by its terms extends to additional property connected to such facilities. EDA's determination shall make reference to the specific requirements (for example, ''water system and all accessions or additions or improvements thereto'') which extend the terms of the pre-existing encumbrance to the property which is acquired and/or improved by the EDA grant.

Subpart B—Real Property

§ 314.7 Title.

(a) The grantee must furnish evidence, satisfactory in form and substance to EDA, that title to real property required for a project (other than property of the United States) is vested in the grantee, and that such easements, rights-of-way, state permits, or long-term leases as are required for the project have been or will be obtained by the grantee within an acceptable time. EDA may determine that, in lieu of title, a long-term leasehold interest for a period not less than the estimated useful life of the project will be acceptable, but only if fee title is not obtainable and the lease provisions adequately safeguard EDA's interest in the project.

(b) The grantee must disclose to EDA any liens, mortgages, other encumbrances, reservations, reversionary interests, or other restrictions on title or the grantee's interest in the property. No such encumbrance or restriction will be acceptable if, as determined by EDA, the encumbrance or restriction will interfere with the construction, use, operation or maintenance of the project during its estimated useful life.

§ 314.8 Recorded statement.

(a) For all projects involving the acquisition, construction or improvement of a building, as determined by EDA, the grantee shall execute a lien, covenant or other statement of EDA's interest in the property acquired or improved in whole or in part with the funds made available under the award. The statement shall specify in years the estimated useful life of the project and shall include, but not be limited to disposition, encumbrance, and compensation of Federal share requirements of this part 314. The statement shall be satisfactory in form and substance to EDA.

(b) The statement of EDA's interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with local law.

(c) Facilities in which the EDA investment is only a small part of a large project, as determined by EDA, may be exempted from the requirements of this section.

Subpart C—Personal Property

§ 314.9 Recorded statement.

For all projects which EDA determines involve the acquisition or improvement of significant items of tangible personal property, including but not limited to ships, machinery, equipment, removable fixtures or structural components of buildings, EDA will require the grantee to execute a security interest or other statement of EDA's interest in the property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with local law, with continuances refiled as appropriate.

§ 314.10 Revolving loan funds.

(a) With EDA's consent, grantees holding revolving loan fund (RLF) property (including but not limited to money, notes, and security interests) may sell such property or encumber such property as part of a securitization of the RLF portfolio in either case to generate money to be used for additional loans as part of the RLF project;

(b) When a grantee determines that it is no longer necessary or desirable to operate an RLF, the RLF may be terminated; provided that, unless otherwise stated in the award, the Federal Government shall be compensated the Federal share of the value of the RLF property. The Federal share shall apply proportionate to the percentage of the capitalization of the RLF contributed by EDA to all RLF property including the present value of all outstanding loans; provided that the grantee may use for other economic development purposes with EDA's approval that portion of such RLF property which EDA determines is attributable to the payment of interest on RLF loans and not used by the grantee for administrative or other allowable expenses.

PART 315—CERTIFICATION AND ADJUSTMENT ASSISTANCE FOR FIRMS AND INDUSTRIES

Subpart A—General Provisions

Sec.
315.1 Purpose and scope.
315.2 Definitions.
315.3 Confidential business information.
315.4 Eligible applicants.
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315.9 Certification requirements.
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315.13 Loss of certification benefits.

Subpart D—Assistance to Industries

315.14 Assistance to firms in import-impacted industries.

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Title II, Chapter 3 of the Trade Act of 1974, as amended, (19 U.S.C. 2341–2355); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

Subpart A—General Provisions

§ 315.1 Purpose and scope.

The regulations in this part implement certain changes to responsibilities of the Secretary of Commerce under Chapter 3 of Title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 et. seq.) (Trade Act), concerning adjustment assistance for firms. The statutory authority and responsibilities of the Secretary of Commerce relating to adjustment assistance are delegated to EDA. EDA has the duties of certifying firms as eligible to apply for adjustment assistance, providing technical adjustment assistance to eligible recipients, and providing assistance to organizations representing trade injured industries.

§ 315.2 Definitions.

As used in this part 315:

Adjustment assistance is technical assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

Adjustment proposal means a certified firm's plan for improving its economic situation.

Certified firm means a firm which has been determined by EDA to be eligible to apply for adjustment assistance.

Confidential business information means information submitted to EDA or TAACs by firms that concerns or relates to trade secrets for commercial or financial purposes which is exempt from public disclosure under 5 U.S.C. 552(b)(4), 5 U.S.C. 552 b(c)(4) and 15 CFR part 4.

Decreased absolutely means a firm's sales or production has declined:

(1) Irrespective of industry or market fluctuations; and

(2) Relative only to the previous performance of the firm;

Directly competitive means:

(1) Articles which are substantially equivalent for commercial purpose, i.e., are adapted to the same function or use and are essentially interchangeable; and

(2) Oil or natural gas (exploration, drilling or otherwise produced);

Firm means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree and includes agricultural entities and those which explore, drill or otherwise produce oil or natural gas. When a firm owns or controls other firms as described below, for purposes of receiving benefits under this part, the firm and such other firms may be considered a single firm when they produce like or directly competitive articles or are exerting essential economic control over one or more production facilities. Such other firms include:

(1) Predecessor;

(2) Successor;

(3) Affiliate; or

(4) Subsidiary.

A group of workers threatened with total or partial separation means there is reasonable evidence that such total or partial separation is imminent;

Like articles means articles which are substantially identical in their intrinsic characteristics.

Partial separation means either:

(1) A reduction in an employee's work hours to 80 percent or less of the employee's average weekly hours during the year preceding such reduction; or

(2) A reduction in the employee's weekly wage to 80 percent or less of his/her average weekly wage during the year preceding such reduction.

Person means individual, organization or group.

The record means:

(1) A petition for certification of eligibility to qualify for adjustment assistance;

(2) Any supporting information submitted by the petitioner;

(3) Report of the EDA investigation in regard to the petition; and

(4) Any information developed during the investigation or in connection with any public hearing held on the petition.

Recipient means a firm, Trade Adjustment Assistance Center or other party receiving adjustment assistance or through which adjustment assistance is provided under the Trade Act.

A significant number or proportion of workers means 5 percent of the firm's work force or 50 workers, whichever is less. Partially separated workers shall be taken into account in proportion to their percentage of separation, and for agricultural operations that are sole proprietorships, an individual farmer is considered a significant number or proportion of workers.

Substantial interest means a direct, material, economic interest in the certification or noncertification of the petitioner.

Technical Assistance means assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

A totally separated worker means an employee who has been laid off or whose employment has been terminated by his/her employer for lack of work.

§ 315.3 Confidential business information.

EDA will follow the procedures set forth in 15 CFR 4.7, and submitters should so designate any information they believe confidential.

§ 315.4 Eligible applicants.

(a) Trade Adjustment Assistance Centers (TAACs) are eligible applicants. A TAAC can be:

(1) A university affiliate;

(2) State or local government affiliate;

(3) Non-profit organization.

(b) Firms;

(c) Organizations assisting or representing industries in which a substantial number of firms or workers have been certified as eligible to apply for adjustment assistance under sections 223 or 251 of the Trade Act including the following:

(1) Existing agencies;

(2) Private individuals;

(3) Firms;

(4) Universities;

(5) Institutions;

(6) Associations;

(7) Unions; or

(8) Other non-profit industry organizations.

§ 315.5 Selection process.

(a) TAACs are selected in accordance with the following:

(1) Currently funded TAACs are invited by EDA to submit either new or amended applications, provided they have performed in a satisfactory manner and complied with previous and or current conditions in their cooperative agreements with EDA and contingent upon availability of funds. Such TAACs shall submit an application on a form approved by OMB, as well as a proposed budget, narrative scope of work, and such other information as requested by EDA. Acceptance of an application or amended application for a cooperative agreement does not assure funding by EDA; and

(2) New TAACs will be invited to submit proposals, and if they are acceptable, EDA will invite an application on a form approved by OMB. An application will be accompanied by a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not assure funding by EDA.

(b) Firms are selected in accordance with the following:

(1) Firms may apply for certification generally through a TAAC by filling out a petition for certification. The TAAC will provide technical assistance to firms wishing to fill out such petitions;

(2) Once firms are certified in accordance with the procedures described in §§ 315.9 and 315.10, an adjustment proposal is usually submitted to EDA which is prepared with technical assistance from a party independent of the firm, usually the TAAC;

(3) Certified firms which have submitted acceptable adjustment proposals within the time limits described in § 315.13 below, may begin implementation of such proposal, generally through the TAAC and often with Technical Assistance from the TAAC, by submitting a request to the TAAC to provide assistance in implementing an accepted adjustment proposal; and

(4) EDA determines whether or not to provide assistance for adjustment proposals based upon § 315.6(c)(2).

(c) Organizations representing trade injured industries must meet with an EDA representative to discuss the industry problems, opportunities and assistance needs, and if invited by EDA may then submit an application as approved by OMB, as well as a scope of work and proposed budget.

§ 315.6 Evaluation criteria.

(a) Currently funded TAACs are generally evaluated based on the following:

(1) How well they have performed under cooperative agreements with EDA and if they are in compliance with the terms and conditions of such cooperative agreements;

(2) Proposed scope of work, budget and application or amended application; and

(3) The availability of funds.

(b) New TAACs are generally evaluated on the following:

(1) Demonstrates competence in administering business assistance programs;

(2) Background and experience of staff;

(3) Proposed scope of work, budget and application; and

(4) The availability of funding.

(c) Firms are generally evaluated based on the following:

(1) For certification, firms' petitions are selected strictly on the basis of conformance with requirements set forth in § 315.9 below;

(2) An adjustment proposal is evaluated on the basis of the following:

(i) The proposal must be submitted to EDA within 2 years after the date of the certification of the firm; and

(ii) The adjustment proposal must include a description of any technical assistance requested to implement such proposal including financial and other supporting documentation as EDA determines is necessary, based upon either:

(A) An analysis of the firm's problems, strengths and weaknesses and an assessment of its prospects for recovery; or

(B) If EDA so determines, an acceptable adjustment proposal can be prepared on the basis of other available information.

(iii) The adjustment proposal must be evaluated to determine that it:

(A) Is reasonably calculated to contribute materially to the economic adjustment of the firm, i.e., that such proposal will be a constructive aid to the firm in establishing a competitive position in the same or a different industry;

(B) Gives adequate consideration to the interests of a sufficient number of separated workers of the firm, by providing for example that the firm will:

(*1*) Give a rehiring preference to such workers;

(*2*) Make efforts to find new work for a number of such workers; and

(*3*) Assist such workers in obtaining benefits under available programs.

(C) Demonstrates that the firm will make all reasonable efforts to use its own resources for economic development, though under certain circumstances, resources of related firm or major stockholders will also be considered.

(d) Organizations representing trade injured industries must demonstrate that the industry is injured by increased imports and that the activities to be funded will yield some short-term actions that the industry itself (and individual firms) can and will take toward the restoration of the industry's international competitiveness.

(1) The emphasis is on practical results that can be implemented in the near term, and long-term research and development activities are given low priority.

(2) It is also expected that the industry will continue activities on its own without the need for continued Federal assistance.

§ 315.7 Award requirements.

(a) Award periods are as follows:

(1) TAACs are generally funded for 12 months;

(2) Firms are generally provided assistance over a 2-year period; and

(3) Organizations representing trade injured industries are generally funded for 12 months.

(b) Matching requirements are as follows:

(1) There are no matching requirements for certification assistance provided by the TAACs to firms or for administrative expenses for the TAACs;

(2) All adjustment proposals and implementation assistance must include not less than 25% nonfederal match, provided to the extent practicable, by firms being assisted; and

(3) Contributions of at least 50% of the total project cash cost, in addition to appropriate in kind contribution, are expected from organizations representing trade injured industries.

Subpart B—Trade Adjustment Assistance Centers

§ 315.8 Purpose and scope.

(a) Trade Adjustment Assistance Centers (TAACs) are available to assist firms in all fifty states, the District of Columbia and the Commonwealth of Puerto Rico in obtaining adjustment assistance. TAACs provide technical assistance in accordance with this subpart either through their own staffs or by arrangements with outside consultants. Information concerning TAACs serving particular areas can be obtained from EDA (See part 300 of this chapter).

(b) Prior to submitting a request for technical assistance to EDA, a firm should determine the extent to which the required technical assistance can be provided through a TAAC. EDA will provide technical assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for technical assistance will normally be made through TAACs.

(c) TAACs generally provide technical assistance to a firm by providing the following:

(1) Assistance to a firm in preparing its petition for certification;

(2) Assistance to a certified firm in diagnosing its strengths and weaknesses and developing an adjustment proposal for the firm; and

(3) Assistance to a certified firm in the implementation of the adjustment proposal for the firm.

Subpart C—Certification of Firms

§ 315.9 Certification requirements.

A firm will be certified eligible to apply for adjustment assistance based upon the petition for certification if EDA determines, under section 251(c) of the Trade Act, that:

(a) A significant number or proportion of workers in such firm have become or are threatened to become totally or partially separated;

(b) Either sales or production, or both of the firm have decreased absolutely; or sales or production, or both of any article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely; and

(c) Increases of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation or threat thereof, and to such decline in sales or production; provided that imports will not be considered to have contributed importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof, or decline in sales or production would have been essentially the same irrespective of the influence of imports.

§ 315.10 Processing petitions for certification.

(a) Firms are encouraged to consult with a TAAC or EDA for guidance and assistance in the preparation of their petitions for certification.

(b) A firm seeking certification shall complete a petition (OMB Control Number 0610–0091) in the form prescribed by EDA with the following information about such firm:

(1) Identification and description of the firm, including legal form of organization, economic history, major ownership interests, officers, directors, management, parent company, subsidiaries or affiliates, and production and sales facilities;

(2) Description of goods and services produced and sold;

(3) Description of imported articles like or directly competitive with those produced;

(4) Data on its sales, production and employment for the 3 most recent years;

(5) Copies of its audited financial statements or if not available unaudited financial statements and Federal income tax returns for the 3 most recent years;

(6) Copies of unemployment insurance reports for the 3 most recent years;

(7) Information concerning its major customers and their purchases; and

(8) Such other information as EDA may consider material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Immediately thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the petitioner that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been corrected and the resubmission will be treated as a new petition.

(d) A notice of acceptance of a petition shall be published in the Federal Register.

(e) An investigation shall be initiated by EDA to determine whether the petitioner meets requirements set forth in section 251(c) of the Trade Act and § 315.9 above. The investigation can be terminated at any time for failure to meet such requirements. A report of this investigation shall become part of the record upon which a determination of the petitioner's eligibility to apply for adjustment assistance shall be made.

(f) A petitioner may withdraw a petition for certification if a request for withdrawal is received by EDA before a certification determination or denial is made. Such firm may submit a new petition at any time thereafter in accordance with the requirements of this section and § 315.9.

(g) Following acceptance, EDA shall decide what action to take on petitions for certification as follows:

(1) Make a determination based on the record as soon as possible after all material has been submitted. In no event may the period exceed 60 days from the date on which the petition was accepted; and

(2) Either certify the petitioner eligible to apply for adjustment assistance or deny the petition, and in either event EDA shall promptly give notice of the action in writing to the petitioner. A notice to the petitioner or any parties requesting notice as specified in § 315.10(d) of a denial of a petition shall specify the reasons upon which the denial is based. If a petition is denied, the petitioner shall not be entitled to resubmit its petition within one year from the date of the denial. At the time of the denial of a petition EDA may waive the 1-year limitation for good cause.

§ 315.11 Hearings, appeals and final determinations.

(a) Any petitioner may appeal to EDA from a denial of certification provided that the appeal is received by EDA in writing by personal delivery or by registered or certified mail within 60 days from the date of notice of denial under § 315.10(g). The appeal shall state the grounds on which the appeal is based, including a concise statement of the supporting facts and law. The decision of EDA on the appeal shall be the final determination within the Department of Commerce. In the absence of an appeal by the petitioner under this paragraph, such final determination shall be determined under § 315.10(g).

(b) A firm, its representative or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within 60 days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination in accordance with section 284 of the Trade Act (19 U.S.C. 2395).

(c) EDA will hold a public hearing on an accepted petition not later than 10 days after the date the publication of the Notice of Acceptance in the Federal Register if requested by either the petitioner or any other person found by EDA to have a substantial interest in the proceedings, under procedures, as follows:

(1) The petitioner and other interested persons shall have an opportunity to be present, to produce evidence, and to be heard;

(2) A request for public hearing must be delivered by hand or by registered mail to EDA. A request by a person other than the petitioner shall contain:

(i) The name, address, and telephone number of the person requesting the hearing; and

(ii) A complete statement of the relationship of the person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of its interest in the proceedings.

(3) If EDA determines that the requesting party does not have a substantial interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial;

(4) EDA shall publish a notice of a public hearing in the Federal Register, containing the subject matter, name of petitioner, and date, time and place of hearing;

(5) EDA shall appoint the presiding officer of the hearing who shall determine all procedural questions;

(6) Procedures for requests to appear are as follows:

(i) Within 5 days after publication of the Notice of Public Hearing in the Federal Register, each party wishing to be heard must file a request to appear with EDA. Such request may be filed by:

(A) The party requesting such hearing;

(B) Any other party with substantial interest; or

(C) Any other party demonstrating to the satisfaction of the presiding officer that it should be allowed to be heard.

(ii) The party filing the request shall submit the names of the witnesses and a summary of the evidence it wishes to present; and

(iii) Such requests to appear may be approved as deemed appropriate by the presiding officer.

(7) Witnesses will testify in the order and for the time designated by the presiding officer, except that the petitioner shall have the opportunity to make its presentation first. After testifying, a witness may be questioned by the presiding officer or his/her designee. The presiding officer may allow any person who has been granted permission to appear to question the witnesses for the purpose of assisting him/her in obtaining relevant and material facts on the subject matter of the hearing;

(8) The presiding officer may exclude evidence which s/he deems improper or irrelevant. Formal rules of evidence shall not be applicable. Documentary material must be of a size consistent with ease of handling, transportation, and filing. Large exhibits may be used during the hearing, but copies of such exhibits must be provided in reduced size for submission as evidence. Two copies of all documentary evidence must be furnished to the presiding officer during the hearing;

(9) Briefs may be presented to the presiding officer by parties who have entered an appearance. Three copies of such briefs shall be filed with the presiding officer within 10 days of the completion of the hearing; and

(10) Procedures for transcripts are as follows:

(i) All hearings will be transcribed. Persons interested in transcripts of the hearings may inspect them at the U.S. Department of Commerce in Washington, DC, or purchase copies as provided in 15 CFR part 4, Public Information; and

(ii) Confidential business information as determined by EDA shall not be a part of the transcripts. Any confidential business information may be submitted directly to the presiding officer prior to the hearing. Such information shall be labeled Confidential Business Information. For the purpose of the public record, a brief description of the nature of the information shall be submitted to the presiding officer during the hearing.

§ 315.12 Termination of certification and procedure.

(a) Whenever EDA determines that a certified firm no longer requires adjustment assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the Federal Register. The termination will take effect on the date specified in the Notice.

(b) EDA shall immediately notify the petitioner and shall state the reasons for such termination.

§ 315.13 Loss of certification benefits.

A firm may fail to obtain benefits of certification, regardless of whether its certification is terminated for any of the following reasons:

(a) Failure to submit an acceptable adjustment proposal within 2 years after date of certification. While approval of an adjustment proposal may occur after the expiration of such 2-year period, an acceptable adjustment proposal must be submitted before such expiration;

(b) Failure to submit documentation necessary to start implementation or modify its request for adjustment assistance consistent with its adjustment proposal within 6 months after approval of the adjustment proposal and 2 years have elapsed since the date of certification. If the firm anticipates that a longer period will be required to submit documentation, such longer period should be indicated in its adjustment proposal. If the firm becomes unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule;

(c) If the firm's request for adjustment assistance has been denied, the time period allowed for the submission of any documentation in support of such request has expired, and 2 years have elapsed since the date of certification; or

(d) Failure to diligently pursue an approved adjustment proposal, and 2 years have elapsed since the date of certification.

Subpart D—Assistance to Industries

§ 315.14 Assistance to firms in import-impacted industries.

(a) Whenever the International Trade Commission makes an affirmative finding under section 202(B) of the Trade Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA shall provide to the firms in such industry, assistance in the preparation and processing of petitions and applications for benefits under programs which may facilitate the orderly adjustment to import competition of such firms.

(b) EDA may provide technical assistance, on such terms and conditions as EDA deems appropriate for the establishment of industry wide programs for new product development, new process development, export development or other uses consistent with the purposes of this part.

(c) Expenditures for technical assistance under this section may be up to $10,000,000 annually per industry and shall be made under such terms and conditions as EDA deems appropriate.

PART 316—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

Sec.

316.1 Environment.
316.2 Certification as to waste treatment.
316.3 Excess capacity.
316.4 Nonrelocation.
316.5 Electric and gas facilities.
316.6 Procedures in disaster areas.
316.7 Project servicing for loans and loan guarantees.
316.8 Public information.
316.9 Relocation assistance and land acquisition policies.
316.10 Additional requirements; Federal policies and procedures.

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Title II, Chapter 3 of the Trade Act of 1974, as amended, (42 U.S.C. 2341–2355); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

§ 316.1 Environment.

(a) The purpose of this section is to ensure proper environmental review of EDA's actions under PWEDA and the Trade Act and to comply with the Federal environmental statutes and regulations in making a determination that balances economic development and environmental enhancement and mitigates adverse environmental impacts to the extent possible.

(b) Environmental assessments of EDA actions will be conducted in accordance with the statutes, regulations, and Executive Orders listed below. This list will be supplemented and modified, as applicable, in EDA's annual FY NOFA.

(1) National Environmental Policy Act of 1969 (NEPA), Pub. L. 91–190, as amended, 42 U.S.C. 4321 et seq. as implemented under 40 CFR parts 1500 et seq.;

(2) Clean Air Act, Pub. L. 88–206 as amended, 42 U.S.C. 7401 et seq.;

(3) Clean Water Act (Federal Water Pollution Control Act), c. 758, 62 Stat. 1152 as amended, 33 U.S.C. 1251 et seq.;

(4) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Pub. L. 96–510, as amended, 42 U.S.C. 9601 et seq. and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499, as amended;

(5) Floodplain Management Executive Order 11988 (May 24, 1977);

(6) Protection of Wetlands Executive Order 11990 (May 24, 1977);

(7) Resource Conservation and Recovery Act of 1976, Pub. L. 94–580 as amended, 42 U.S.C. 9601 et seq.;

(8) Historical and Archeological Data Preservation Act, Pub. L. 86–523, as amended, 16 U.S.C. 469a–1 et seq.;

(9) National Historic Preservation Act of 1966, Pub. L. 89–665, as amended, 16 U.S.C. 470 et seq.;

(10) Endangered Species Act of 1973, Pub. L. 93–205, as amended, 16 U.S.C. 1531 et seq.;

(11) Coastal Zone Management Act of 1972, Pub. L. 92–583, as amended, 16 U.S.C. 1451 et seq.;

(12) Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended, 42 U.S.C. 4002 et seq.;

(13) Safe Drinking Water Act of 1974, Pub. L. 92–523, as amended, 42 U.S.C. 300f–j26;

(14) Wild and Scenic Rivers Act, Pub. L. 90–542, as amended, 16 U.S.C. 1271 et seq.;

(15) Environmental Justice in Minority Populations and Low-Income Populations Executive Order 12898 (February 11, 1994);

(16) Farmland Protection Policy Act, Pub. L. 97–98, as amended, 7 U.S.C. 4201 et seq.; and

(17) Other Federal Environmental Statutes and Executive Orders as applicable.

§ 316.2 Certification as to waste treatment.

Whenever the Environmental Protection Agency (EPA) has established a permitting and enforcement system for the regulation and monitoring of the design and operation of wastewater treatment plants which is delegated to the states for certification, EDA under PWEDA will accept such state certifications in lieu of certification by EPA.

§ 316.3 Excess capacity.

(a) All projects funded by EDA under PWEDA are subject to section 702 of PWEDA and EDA shall determine section 702 compliance based on the following:

(1) A Section 702 study;

(2) A Section 702 report; or

(3) A Section 702 exemption.

(b) Definitions: For purposes of § 316.3 only:

Capacity means the maximum amount of goods or services that can be produced or supplied by existing competitive enterprises using existing facilities.

Demand means the amount of goods or services consumers in the market area are willing to buy at current prices.

Efficient Capacity means that part of capacity produced or supplied through the use of contemporary structures, machinery and equipment, designs and technologies.

Existing Competitive Enterprise means an established facility which either produces the same product or supplies the same service to all or a substantial part of the market area.

Market Area means the geographic area within which products and/or services compete for purchase by customers.

Primary Beneficiary means one or more firms within the same industry which may reasonably be expected to use 50 percent or more of the capacity of an EDA-financed facility(ies) in order to expand the supply of goods or services sold in competition with other producers or suppliers of such goods or services.

(c) For certain types of EDA projects, a section 702 study of competitive impact will be used as a basis for a decision by EDA that such project would not violate section 702 of PWEDA. A section 702 study is required when either of the following situations exists:

(1) Where a primary beneficiary is present; or

(2) When EDA so determines.

(d) The following procedures shall be followed to the extent necessary to provide EDA with sufficient information to prepare a 702 study:

(1) The primary beneficiary shall submit as part of the project selection process the following information with regard to each product or service affected by the project:

(i) A detailed description;

(ii) Current and projected amount and value of annual sales;

(iii) Distribution channel(s) and geographic marketing area; and

(iv) Name of other suppliers and amount presently available in the market area.

(2) If the primary beneficiary has conducted or commissioned a market study supporting the proposed project, such market study shall be made available to EDA early in the project selection process for verification and possible use by EDA as a basis for the 702 study or report.

(e) A section 702 report (a summary of supply/demand factors) will form an acceptable basis on which to make a section 702 compliance finding when the characteristics described in paragraph (c) (1) or (2) of this section are present and in addition, it is readily apparent that the resulting increase in output alleviates a shortage of goods or services in the market area.

(f) EDA will make a blanket finding of compliance with section 702 of PWEDA for those projects which have one or more of the following characteristics:

(1) The project has no primary beneficiary;

(2) The beneficiary's projected new or additional annual output is less than 1 percent of the last recorded annual output in the market area;

(3) The project will replace or restore capacity recently destroyed by flood, fire, wind, or other natural disaster;

(4) The project will assure the retention of the physical capacity and/or employment;

(5) The project will replace, rebuild or modernize, within the same labor market area, facilities displaced by official governmental action;

(6) The project assures completion of a project previously assisted by EDA where further funding is required because of revised project cost estimates, rather than for additional productive capacity;

(7) When the purpose of research or evaluation grants or cooperative agreements is to determine the causes of or to assist in the formulation of programs to address, or to provide personnel needed to conduct programs concerning unemployment, underemployment, underdevelopment, or chronic depression;

(8) When the purpose of planning grants to state or local governments, or regional or area organizations is to fund administrative expenses of a planning process or for the preparation of economic development plans or programs;

(9) When a technical assistance grant is not designed to assist a specific firm or group of firms or lead directly to expanded productive capacity or output of specific goods or services for sale in a designated market area; and

(10) PWIP projects.

§ 316.4 Nonrelocation.

(a) General requirements for nonrelocation for funding under PWEDA are as follows:

(1) EDA financial assistance will not be used to assist employers who transfer jobs from one commuting area to another. A commuting area (''area'') is that area defined by the distance people travel to work in the locality of the project receiving EDA financial assistance;

(2) Every applicant for EDA financial assistance has an affirmative duty to inform EDA of any employer who will benefit from such assistance who will transfer jobs (not persons) in connection with the EDA grant;

(3) EDA will determine compliance with this requirement prior to grant award based upon information provided

by the applicant during the project selection process; and

(4) Each applicant and identified primary beneficiary of EDA assistance, which for purposes of this section means an entity providing the economic justification for the project, must submit its certification of compliance with this section, and other applicable information as determined by EDA.

(b) The nonrelocation requirements stated in paragraph (a) of this section shall not apply to businesses which:

(1) Relocated to the area prior to the date of applicant's request for EDA assistance;

(2) Have moved or will move into the area primarily for reasons which have no connection to the EDA assistance;

(3) Will expand employment in the area where the project is to be located substantially beyond employment in the area in which the business had originally been located;

(4) Are relocating from technologically obsolete facilities to be competitive;

(5) Are expanding into the new area by adding a branch, affiliate, or subsidiary while maintaining employment levels in the old area or areas; or

(6) Are determined by EDA to be exempt.

§ 316.5 Electric and gas facilities.

(a) General requirements for funding under PWEDA are as follows:

(1) Except for those types of facilities listed in paragraph (a)(2), (b) and (c) of this section, no financial assistance authorized under PWEDA will be used to finance:

(i) The cost of facilities for the generation, transmission, or distribution of electrical energy; or

(ii) For the production or transmission of natural, manufactured or mixed gas.

(2) Electric or gas facilities are eligible to receive EDA funding under PWEDA if they meet the following requirements:

(i) Those specifically authorized by Congress; or

(ii) If not funded, jobs will be lost or reduced or new jobs will not be created, provided the following findings are made:

(A) EDA determines that project financing is not available from private lenders or other Federal agencies on terms which, in the opinion of EDA, would permit completion and operation of the project; and

(B) The Federal or state agency regulating such facility makes one of the following determinations:

(1) There would not be any competition with existing public utilities under their jurisdiction in public rate charges; and

(2) There would be such competition as described in paragraph (a)(2)(ii) (B)*(1)* of this section, but existing public utilities are unable or unwilling to meet the increase in demand for such energy.

(b) Electrical facilities may also be funded if such funds would be used for:

(1) An internal electrical system (system) on the consumer side of the distribution metering station, including for example, conductors, conduits, structures, switchgear, transformers and other appurtenances; provided such system meets the following requirements:

(i) It is owned by the owner of all or a portion of the facility served by such system; and

(ii) Electricity carried on such system will not be resold.

(2) Standby electrical generating equipment, provided that such equipment is:

(i) Incapable of and not intended to provide service on a regular and continuous basis; and

(ii) Needed to prevent significant damage or harm resulting from a power failure.

(3) Facilities for replacement or expansion of existing public utilities when the area served will remain unchanged;

(4) Otherwise eligible components of projects which generate electricity but which also have other purposes, such as heating; or

(5) Electrical generation facilities which use waste as an alternative to conventional fuels.

(c) Gas facilities, including those needed for local storage, regulation and consumer metering, may also be funded if for the distribution of gas from the plant and metering station to consumers within a particular area.

§ 316.6 Procedures in disaster areas.

When non-statutory EDA administrative or procedural conditions for financial assistance award cannot be met by applicants under PWEDA as the result of a disaster, EDA may waive such conditions.

§ 316.7 Project servicing for loans and loan guarantees.

EDA will provide project servicing to borrowers and lenders who received EDA loans and/or guaranteed loans under any programs administered by EDA. This includes but is not limited to loans under PWEDA, the Trade Act and the Community Emergency Drought Relief Act of 1977.

(a) EDA will continue to monitor such loans and guarantees in accordance with the loan or guarantee program.

(b) Borrowers/lenders shall submit to EDA any requests for modifications of their agreements with EDA. EDA shall, in accordance with applicable laws and policies, including the Federal Credit Reform Act of 1990 (2 U.S.C. 661 c(e)), consider and respond to such modification requests.

(c) In the event that EDA determines it necessary or desirable to take actions to protect or further the interests of EDA in connection with loans or guarantees made or evidences of indebtedness purchased, EDA may:

(1) Assign or sell at public or private sale, or otherwise dispose of for cash or credit, in its discretion and upon such terms and conditions as it shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by it in connection with financial assistance extended;

(2) Collect or compromise all obligations assigned to or held by it in connection with EDA financial assistance projects until such time as such obligations may be referred to the Attorney General for suit or collection; and

(3) Take any and all other actions determined by it to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with or realizing on loans or guaranties made or evidences of indebtedness purchased.

§ 316.8 Public information.

The rules and procedures regarding public access to the records of the Economic Development Administration are found at 15 CFR part 4.

§ 316.9 Relocation assistance and land acquisition policies.

Recipients of EDA financial assistance under PWEDA and the Trade Act (states and political subdivisions of states and non-profits as applicable) are subject to requirements set forth at 15 CFR part 11.

§ 316.10 Additional requirements; Federal policies and procedures.

Grantees as defined under § 314.2 of this chapter are subject to all Federal laws and to Federal, Department of Commerce and EDA policies, regulations, and procedures applicable to Federal financial assistance awards.

PART 317—CIVIL RIGHTS

Sec.

317.1 Civil rights.

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

§ 317.1 Civil rights.

(a) Discrimination is prohibited in programs receiving federal financial assistance from EDA in accordance with the following authorities:

(1) Section 601 of Title VI of the Civil Rights Act of 1964, codified at 42 U.S.C. 2000d et seq. (proscribing discrimination on the basis of race, color, or national origin), and the Department of Commerce's implementing regulations found at 15 CFR part 8;

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex);

(3) 29 U.S.C. 794, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 8b (proscribing discrimination on the basis of disabilities);

(4) 42 U.S.C. 6101, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 20; and

(5) Other Federal statutes, regulations and Executive Orders as applicable.

(b)(1) Definitions:

(1) Other Parties means, as an elaboration of the definition in 15 CFR part 8, entities which, or which are intended to create and/or save 15 or more permanent jobs as a result of EDA assistance provided that they are also either specifically named in the application as benefitting from the project, or are or will be located in an EDA building, port, facility, or industrial, commercial or business park prior to EDA's final disbursement of funds awarded for the project.

(2) Additional definitions are provided in EDA's Civil Rights Guidelines and 15 CFR part 8.

(c) All recipients of EDA financial assistance under PWEDA and the Trade Act, and Other Parties are required to submit the following to EDA:

(1) Written assurances that they will comply with Department of Commerce and EDA regulations, and such other requirements as may be applicable, prohibiting discrimination;

(2) Employment data (form ED–612);

(3) Information on civil rights status and involvement in charges of discrimination in employment or the provision of services during the 2 years previous to the date of submission of such data as follows:

(i) Description of the status of any lawsuits, complaints or the results of compliance reviews; and

(ii) Statement indicating any administrative findings by a Federal or State agency.

(4) Whenever deemed necessary by EDA to determine that applicants and other parties are in compliance with civil rights regulations, such applicants and other parties shall submit additional information in the form and manner requested by EDA; and

(5) In addition to employment record requirements found in 15 CFR 8.7, complete records on all employees and applicants for employment, including information on race, sex, national origin, age, education and job-related criteria must be retained by employers.

(d) To enable EDA to determine that there is no discrimination in the distribution of benefits in projects which provide service benefits, in addition to requirements listed in paragraph (c) of this section, applicants are required to submit any other information EDA may deem necessary for such determination.

(e) EDA assisted planning organizations must meet the following requirements:

(1) For the selection of representatives, EDA expects planning organizations and OEDP Committees to take appropriate steps to ensure that there is adequate representation of minority and low-income populations, women, people with disabilities and Federal and State recognized American Indian tribes and that such representation is accomplished in a nondiscriminatory manner; and

(2) EDA assisted planning organizations and OEDP Committees shall take appropriate steps to ensure that no individual will be subject to discrimination in employment because of their race, color, national origin, sex, age or disability.

(f) Reporting and other procedural matters are set forth in 15 CFR parts 8, 8(b), 8(c), and 20 and the Civil Rights Guidelines which are available from EDA's Regional Offices. See part 300 of this chapter.

PART 318—[RESERVED]

Dated: September 18, 1995.

Wilbur F. Hawkins,

Acting Assistant Secretary for Economic Development.

[FR Doc. 95–23522 Filed 9–25–95; 8:45 am]

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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. I and Part 1, et al.
Federal Acquisition Regulation Amendments; Interim and Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter I

[Federal Acquisition Circular 90–33]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document serves to introduce the final rules which follow and which comprise Federal Acquisition Circular (FAC) 90–33. The Federal Acquisition Regulatory Council has agreed to issue FAC 90–33 to amend the Federal Acquisition Regulation (FAR).

DATES: For effective dates, see individual documents following this one.

FOR FURTHER INFORMATION CONTACT: The individual whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–33 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–33 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Contact point
I	Contract Financing	94–764	John Galbraith, (703) 697–6710.
II	Special Contracting Methods	94–710	Ed McAndrew, (202) 501–1474.
III	Task and Delivery Order Contracts	94–711	Ed McAndrew, (202) 501–1474.
IV	Fraud Remedies	94–765	John Galbraith, (703) 697–6710.
V	Assignment of Claims	94–761	John Galbraith, (703) 697–6710.
N/A	Information Item—Cost or Pricing Data Threshold	N/A	C. Allen Olson, (202) 501–0692.

Case Summaries

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Item I—Contract Financing (FAR Case 94–764)

This final rule implements sections 2001 and 2051 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (the Act). Sections 2001 and 2051 substantially changed the statutory authorities for Government financing of contracts. The Government is now authorized to provide contract financing that is appropriate or customary in the commercial marketplace for purchases of commercial items. The Government is also authorized to provide contract financing for non-commercial items, on the basis of measurements of the contractor's actual performance on the contract.

To implement these changes, the FAR has been amended by revising sections 32.000 and 32.001 and Subparts 32.1, 32.4, 32.5, and 42.3; by adding new sections 32.002 through 32.005 and Subparts 32.2 and 32.10; and by adding new clauses to 52.232.

The statutory changes create a fundamental distinction between financing of purchases of commercial and non-commercial items. As a result, the subparts of Part 32, Contract Financing, fall into three logical categories:

—Subparts applicable to both commercial and non-commercial financing;
—Subparts applicable to only commercial financing; and
—Subparts applicable to only non-commercial financing.

The specific subparts in each category are identified at 32.002, Applicability of Subparts.

Sections 32.000 and 32.005 now contain the general policy and guidance which is applicable to Government contract financing of both commercial and non-commercial items.

Subpart 32.1, Non-commercial Item Purchase Financing, now contains the general policy and guidance applicable to non-commercial purchases. The content of this subpart reflects existing policy and guidance that previously appeared in other locations in Part 32. These policies have been moved to Subpart 32.1 to give them general applicability to all forms of financing of non-commercial items.

Subpart 32.2, Commercial Item Purchase Financing, contains the policy and guidance applicable to contract financing of commercial purchases. This subpart is wholly new. The Act places Government financing of commercial purchases on a different statutory basis than for non-commercial purchases. As a result, the new subpart provides several alternative procedures for establishing contract financing terms for commercial items. The new subpart also provides standard terms for use by contracting officers in establishing financing for contracts.

The installment payment clause at 52.232–30 permits contracting officers to incorporate financing into contracts for commercial items without any administrative effort beyond incorporation of the clause.

Subpart 32.4 has been renamed ''Advanced Payments for Non-Commercial Items'' in order to reduce the confusion between this financing mechanism and commercial advance payments under Subpart 32.2. Subpart 32.4 does not apply to commercial advance payments.

Subpart 32.5, Progress Payments Based on Costs, has been slightly modified to reflect the separation of commercial from non-commercial items and to reflect the general policy in Subpart 32.1 for availability of financing for non-commercial purchases.

Subpart 32.10, Performance-Based Payments, contains the policy and guidance applicable to contract financing through performance-based payments. This is a wholly new subpart which provides the policy and procedures for establishing and administering performance-based payments. Performance-based payments under this subpart are applicable only to non-commercial purchases.

Subpart 42.3, Contract Administration, is amended to reflect delegations of functions for commercial financing and for performance-based payments.

FAR 52.232 is amended to add the clauses and solicitation provisions required to implement the new statutory authorities. For performance-based

financing and commercial financing (except for installment payments), contracting officers will have to determine the form of contract financing and write individualized contract terms establishing the computation of amounts and certain other contract financing terms.

Item II—Special Contracting Methods (FAR Case 94–710)

This final rule implements Sections 1074, 1503, 1504, 1552, 1553, 2454 and 6002 of the Federal Acquisition Streamlining Act of 1994 (the Act). Section 1074 concerns placement of interagency orders under the Economy Act; Sections 1503, 1504, 1552, and 1553 address delegation of procurement functions and determinations and decisions; Section 2454 concerns contracted advisory and assistance services; and Section 6002 concerns contracting functions performed by Federal personnel. FAR 1.601, 7.103, 17.5, and 37.2 are revised to implement these sections of the Act.

Item III—Task and Delivery Order Contracts (FAR Case 94–711)

This final rule implements Sections 1004 and 1054 of the Federal Acquisition Streamlining Act of 1994 (the Act). Sections 1004 and 1054 created statutory definitions for ''task order contract'' and ''delivery order contract'' and created a statutory preference for making multiple awards of task and delivery order contracts. Sections 1004 and 1054 also established certain limitations on task order contracts for advisory and assistance services. FAR Subpart 16.5 is revised and new provisions are added at 52.216–27 and 52.216–28 to reflect these statutory requirements.

The final rule creates a preference for making multiple awards of indefinite-quantity contracts, and specifies when multiple awards should not be made. The rule contains no specific procedures for making awards of indefinite-quantity contracts, in order to empower agencies to develop selection criteria that meet the unique needs of each acquisition. However, the rule does include guidance with respect to the procedures that may be used for issuing orders under multiple award contracts.

FAR section 16.500 is issued as an interim rule pending receipt of public comments.

Item IV—Fraud Remedies (FAR Case 94–765)

This final rule implements Section 2051(e) of the Federal Acquisition Streamlining Act of 1994 (the Act). 10 U.S.C. 2307 contains a statutory requirement entitled ''Action in Case of Fraud'' applicable to only the Department of Defense. Section 2051(e) of the Act added this statutory requirement to the Federal Property and Administrative Services Act (41 U.S.C. 255) applicable to civilian agencies.

The statutes at 10 U.S.C. 2307 and 41 U.S.C. 255 provide that, if the Government official concerned with coordinating the Government's remedies for a particular case of fraud finds that an advance, partial, or progress payment is based on fraud, that official must recommend the head of the agency reduce or suspend further payments to that contractor. The statutes further provide due process requirements, standards for the amount of suspension or reduction, and other policy and procedural requirements. A new section is added at FAR 32.006 to reflect these statutory requirements.

Item V—Assignment of Claims (FAR Case 94–761)

This final rule implements Section 2451 of the Federal Acquisition Streamlining Act of 1994 (the Act). The rule revises FAR 32.803(d) to expand the authorization of a no-setoff commitment in contracts for which assignment of claims are made. Prior to the Act, the no-setoff commitment could only be included in a contract during time of war or national emergency. Under the Act, the inclusion of the no-setoff commitment is based solely on whether the President makes a determination of need. Until an agency has received such a determination of need, the ''No-Setoff'' Alternate I of the clause at 52.232–23, Assignment of Claims, shall not be used.

Information Item—Cost or Pricing Data Threshold

This information item is to provide notice that an adjustment to the cost or pricing data threshold at FAR 15.804–2 will not be made as of October 1, 1995. Sections 1201 and 1251 of the Federal Acquisition Streamlining Act of 1994 (the Act) require the threshold for obtaining cost or pricing data to be adjusted (in certain circumstances) once every five years beginning October 1, 1995. The required adjustment amount is the amount that reflects a constant dollar adjustment of the $500,000 threshold, based on fiscal year 1994 dollars, rounded to the nearest $50,000. The constant dollar adjustment amount did not exceed $25,000. Accordingly, the Act does not require or authorize an adjustment as of October 1, 1995. This analysis and the required adjustment, if any, must be performed again in the year 2000.

Dated: September 21, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Federal Acquisition Circular

Number 90–33

Federal Acquisition Circular (FAC) 90–33 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–33 is effective October 1, 1995. The rules contained in this FAC are applicable for solicitations issued on or after October 1, 1995.

Dated: September 19, 1995.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: September 18, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy, General Services Administration.

Dated: September 19, 1995.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement, NASA.

[FR Doc. 95–23867 Filed 9–25–95; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Parts 1, 32, 42, and 52

[FAC 90–33; FAR Case 94–764; Item I]

RIN 9000–AG36

Federal Acquisition Regulation; Contract Financing

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) pertaining to Contract Financing as a result of changes to 10 U.S.C. 2307 and 41 U.S.C. 255 by sections 2001 and 2051 of the Act. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John Galbraith, Contract Financing/

Payment Team Leader, at (703) 697–6710 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405; (202) 501–4755. Please cite FAC 90–33; FAR case 94–764.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements.

This rule implements sections 2001 and 2051 of the Act which substantially changed the statutory authorities for Government financing of contracts. Subsections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items, and subsections 2001(b) and 2051(b) substantially revise the authority for Government financing of purchases of non-commercial items.

Subsections 2001(f) and 2051(e) amend 10 U.S.C. 2307 and 41 U.S.C. 255 by adding a new paragraph, Conditions for Payments for Commercial Items, to each. These paragraphs authorize the Government to provide contract financing with certain limitations:

- The financing must be in the best interest of the Government;
- The financing cannot exceed 15 percent until some performance of work under the contract;
- The terms and conditions must be appropriate or customary in the commercial marketplace.

The above statutory provisions also remove from financing of commercial purchases certain restrictions applicable to financing of non-commercial purchases by other provisions of 10 U.S.C. 2307 and 41 U.S.C. 255.

Subsections 2001(b) and 2051(b) amend the authority for Government financing of non-commercial purchases by authorizing financing on the basis of certain classes of measures of performance.

The statutory changes create a fundamental distinction between financing of purchases of commercial and non-commercial items. As a result, the subparts of part 32, Contract Financing, fall into three logical categories:

- Subparts applicable to both commercial and non-commercial financing;
- Subparts applicable to only commercial financing; and
- Subparts applicable to only non-commercial financing.

The specific subparts in each category are identified at 32.002 (Applicability of subparts).

Subpart Discussion

Sections 32.000 thru 32.005 now contain the general policy and guidance which is applicable to Government contract financing of both commercial and non-commercial items.

Subpart 32.1 (Non-commercial Item Purchase Financing) now contains the general policy and guidance applicable to non-commercial purchases. The content of this subpart reflects existing policy and guidance that previously appeared in other locations in part 32. These policies have been moved to subpart 32.1 to give them general applicability to all forms of financing of non-commercial items.

Subpart 32.2 (Commercial Item Purchase Financing) contains the policy and guidance applicable to contract financing of commercial purchases. This subpart is wholly new. The new statute places Government financing of commercial purchases on a different statutory basis than for non-commercial purchases. As a result, the new subpart provides several alternative procedures for establishing contract financing terms for commercial items. The new subpart also provides standard terms for use of contracting officers in establishing financing in contracts.

The installment payment clause permits contracting officers to incorporate financing into contracts for commercial items without any administrative effort beyond incorporation of the clause.

Subpart 32.4 has been renamed ''Advanced Payments for Non-Commercial Items'', in order to reduce the confusion between this financing mechanism and commercial advance payments under subpart 32.2. Subpart 32.4 does not apply to commercial advance payments.

Subpart 32.5 (Progress Payments Based on Costs) has been slightly modified to reflect the separation of commercial from non-commercial items and to reflect the general policy in 32.1 for availability of financing for non-commercial purchases.

Subpart 32.10 (Performance-Based Payments) contains the policy and guidance applicable to contract financing through performance-based payments. This is a wholly new subpart which provides the policy and procedures for establishing and administering performance-based payments. Performance-based payments under this subpart are applicable only to non-commercial purchases.

Subpart 42.3 (Contract Administration) is amended to reflect delegations of functions for commercial financing and for performance based payments.

FAR 52.232 is amended to add the additional clauses and solicitation provisions required to implement the new statutory authorities. For performance-based financing and commercial financing (except for installment payments), contracting officers will have to determine the form of contract financing and write individualized contract terms establishing the computation of amounts and certain other contract financing terms.

B. Regulatory Flexibility Act

This rule is expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed implementation of subsection 2001(f) and subsection 2051(e) of the Federal Acquisition Streamlining Act of 1994 (Act) (Public Law 103–355) will substantially increase the availability of Government contract financing for purchases of commercial items, thereby benefiting many small entities making commercial sales; and because the implementation of subsection 2001(b) and subsection 2051(b) of the Act permits contract financing of purchases of non-commercial items upon the basis of performance, without requiring contractor cost accounting systems for the contract financing, thereby benefiting many small entities who do not use such systems. A Final Regulatory Flexibility Analysis (FRFA) has been performed and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the rule contains information collection requirements. A request for approval of the information collection requirement concerning Contract Financing was submitted to OMB and approved through May 31, 1998, OMB Control 9000–0138. Public comments concerning this request were invited through a Federal Register notice at 60 FR 14171, March 15, 1995.

D. Public Comments

A proposed rule was published in the Federal Register at 60 FR 14156, March

15, 1995. During the public comment period, 263 comments were received.

Agency Discretion

A number of commentors expressed concern over the provisions for agency discretion in the coverage. This discretion is unavoidable. The changes in the statutes cause contract financing to become a larger issue in conducting procurements. Given the wide differences in the various parts of the Executive Branch, and the even wider differences in the things many of them procure and finance, Government-wide regulation could not reasonably provide the breadth and depth of coverage needed to avoid the use of agency discretion.

Subcontracting Financing

A number of commentors raised the issue of Government contract financing for commercial subcontractors. The most recent comments have also raised the issue of commercial subcontracts under cost-reimbursement contracts, and subcontractor performance-based payments. While a recommendation to adopt these policies may be made, they are a refinement of policy, not essential to the initial implementation of the Act. The FARC will consider addressing the issue of subcontractor financing policy changes as a new policy issue at a later time.

Policy for Use of Contract Financing

FAR 32.203 (Determining Contract Financing Terms) has been extensively streamlined to increase the contracting officer's discretion in using financing for commercial item purchases. A major factor was industry advice that generally there are no organized markets with ''customary'' financing terms. In most situations financing terms are highly elastic and mutable; depending upon the relative size of the purchase, the relative costs of capital of the respective parties, the internal management objectives of the parties, the state of the world, national, and local economies and business cycles, the financial rating and reputation of the buyer and seller, and the parties' relative bargaining powers. It was concluded that it is not feasible at the beginning of this policy to establish at the Federal level a hard rule, for use of financing for all commercial purchases, that will always be in the best interests of the Government. It is expected that individual agencies will begin to discover markets and products where there is some consistency of practice (without anti-trust implications). The results of this exploration of commercial item purchasing may ultimately be collectable at the FAR level.

Guidance on Security

A number of commentors discussed the guidance on security for commercial item financing. The authorizing statute explicitly requires security for all commercial financing. The rule provides the widest discretion to the contracting officers in complying with this requirement, however, it is necessarily different from the practices of profit-making businesses. It should be noted that in business, losses, from credit risk are a cost of sales. In business, credit losses are offset by resulting profits. In Government, credit losses are absolute, there are no offsetting profits. Thus, security will always be more critical to the Government.

Previous comments had complained that the OMB A–94 Circular rate previously proposed was not widely available. Those comments had lead to the adoption of the Treasury Note rate as being widely available in many newspapers throughout the country. However, in view of the advice that this rate is not uniformly reported, and to insure an authoritative interest rate for evaluating the cost to the Government of offeror-proposed financing, the coverage has been changed to specify the OMB A–94 interest rate for this evaluation.

Installment Payments

A number of commentors have recommended the extension of the concept of installment payments to non-commercial item financing. For a number of legal and practical reasons, that cannot be done. However, this final rule contains the installment payment provisions of the proposed rule for use in commercial item purchases.

Relation to Other Agency-Specific Financing Methods

Comments were received concerning the relationship of performance-based payments as implemented in subpart 32.10, to other agency-specific, or product-specific forms of performance-based financing. There are a number of specialized forms of contract financing, such as shipbuilding progress payments and construction progress payments, that are based on measures of contractor performance, such as percentage of completion. In addition, some agencies have also developed specialized financing terms that are based on measures of contractor performance, for example, milestone billings. Subpart 32.10 is designed for use with any of the bases for measuring contractor performance provided for in the Act. It is therefore broader and more general than specifically tailored contract financing provisions. The policy and procedures in subpart 32.10 do not supersede or alter the existing forms of performance-based contract financing, nor are agencies restricted in future developments of innovative policy.

Combinations of Types of Financing

A large number of commentors urged allowing both progress payments based on costs, and performance-based payments, in the same contract. Previous review of the legal, computational, payment, and liquidation aspects of such a combination has indicated it is not practical. The issue has been reconsidered and no change is warranted.

Performance-Based Financing on Undefinitized Contracts

Some commentors raised the issue of performance-based payments on undefinitized contracts, arguing that this should be allowed. While the rule does not accept the concept of performance-based payments during the period the contract is undefinitized, the clause prescription has been modified to facilitate the negotiation of the Performance-Based Payment schedule for use after definitization.

Performance-Based Payments as Delivery Payments

A number of commentors recommended, rather than treating performance-based payments as contract financing payments, that they be treated as delivery payments. This idea, while attractive from an accounting standpoint, is not new. It has been repeatedly considered over the years. However, there are a number of essentially legal issues that have discouraged creation of a ''delivery payment contract financing'' mechanism. Both agency and industry commentors were invited to propose specific contractual language and provide the legal analysis needed to consider such a concept. The FAR Council will, in the future, consider such proposals, should they be submitted.

List of Subjects in 48 CFR Parts 1, 32, 42, and 52

Government procurement.

Dated: September 20, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR parts 1, 32, 42, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 1, 32, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. The table in section 1.106 is amended under the ''FAR Segment'' and ''OMB Control Number'' columns by revising entries ''32.1'' and ''32.5'' and adding entries, in numerical order, to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No
* * *	* *
32.000	9000–0138.
32.1	9000–0070 and 9000–0138.
32.2	9000–0138.
* * *	* *
32.5	9000–0010 and 9000–0138.
* * *	* *
32.10	9000–0138.
* * *	* *
52.232–29	9000–0138.
52.232–30	9000–0138.
52.232–31	9000–0138.
52.232–32	9000–0138.

* * * * *

PART 32—CONTRACT FINANCING

3. Section 32.000 is amended at the end of paragraph (e) by removing the word ''and''; in paragraph (f) by removing the period and inserting a semicolon in its place; and by adding paragraphs (g) and (h) to read as follows:

32.000 Scope of part.

* * * * *

(g) Financing of purchases of commercial items; and

(h) Performance-based payments.

4. Section 32.001 is amended by revising the section heading and adding, in alphabetical order, the definitions ''customary contract financing'' and ''unusual contract financing'' to read as follows:

32.001 Definitions.

* * * * *

Customary contract financing means that financing deemed by an agency to be available for routine use by contracting officers. Most customary contract financing arrangements should be usable by contracting officers without specific reviews or approvals by higher management.

Unusual contract financing means any financing not deemed customary contract financing by the agency. Unusual contract financing is financing that is legal and proper under applicable laws, but that the agency has not authorized contracting officers to use without specific reviews or approvals by higher management.

5. Sections 32.002 through 32.005 are added to read as follows:

Sec.

32.002 Applicability of subparts.
32.003 Simplified acquisition procedures financing.
32.004 Contract performance in foreign countries.
32.005 Consideration for contract financing.

32.002 Applicability of subparts.

(a) The following sections and subparts of this part are applicable to all purchases subject to part 32:

(1) Sections 32.000 through 32.005.

(2) Subpart 32.3, Loan Guarantees for Defense Production.

(3) Subpart 32.6, Contract Debts.

(4) Subpart 32.7, Contract Funding.

(5) Subpart 32.8, Assignment of Claims.

(6) Subpart 32.9, Prompt Payment.

(b) Subpart 32.2, Commercial Item Purchase Financing, is applicable only to purchases of commercial items under authority of part 12.

(c) The following subparts of this part are applicable to all purchases made under any authority other than part 12:

(1) Subpart 32.1, Non-Commercial Item Purchase Financing.

(2) Subpart 32.4, Advance Payments For Non-Commercial Items.

(3) Subpart 32.5, Progress Payments Based on Costs.

(4) Subpart 32.10, Performance-Based Payments.

32.003 Simplified acquisition procedures financing.

Unless agency regulations otherwise permit, contract financing shall not be provided for purchases made under the authority of part 13.

32.004 Contract performance in foreign countries.

The enforceability of contract provisions for security of Government financing in a foreign jurisdiction is dependent upon local law and procedure. Prior to providing contract financing where foreign jurisdictions may become involved, the contracting officer shall ensure the Government's security is enforceable. This may require the provision of additional or different security than that normally provided for in the standard contract clauses.

32.005 Consideration for contract financing.

(a) *Requirement.* When a contract financing clause is included at the inception of a contract, there shall be no separate consideration for the contract financing clause. The value of the contract financing to the contractor is expected to be reflected in either

(1) A bid or negotiated price that will be lower than such price would have been in the absence of the contract financing, or

(2) Contract terms and conditions, other than price, that are more beneficial to the Government than they would have been in the absence of the contract financing. Adequate new consideration is required for changes to, or the addition of, contract financing after award.

(b) *Amount of new consideration.* The contractor may provide new consideration by monetary or nonmonetary means, provided the value is adequate. The fair and reasonable consideration should approximate the amount by which the price would have been less had the contract financing terms been contained in the initial contract. In the absence of definite information on this point, the contracting officer should apply the following criteria in evaluating whether the proposed new consideration is adequate:

(1) The value to the contractor of the anticipated amount and duration of the contract financing at the imputed financial costs of the equivalent working capital.

(2) The estimated profit rate to be earned through contract performance.

(c) *Interest.* Except as provided in subpart 32.4, Advance Payments for Non-Commercial Items, the contract shall not provide for any other type of specific charges, such as interest, for contract financing.

6. Subpart 32.1 heading and section 32.100 are revised to read as follows:

Subpart 32.1—Non-Commercial Item Purchase Financing

32.100 Scope of subpart.

This subpart provides policies and procedures applicable to contract financing and payment for any purchases other than purchases of commercial items in accordance with part 12.

32.101 [Amended]

7. Section 32.101 is amended by removing the period at the end of the section and inserting in its place '', as amended.''

8. Section 32.102 is amended in the last sentence of paragraph (a) by

removing the word ''subadvances'' and inserting in its place ''advances''; in paragraph (b)(2) by removing the word ''or''; in paragraph (b)(3) by removing the period and inserting in its place ''; or''; adding paragraphs (b)(4) and (f); and in paragraph (d) by adding at the end of the first sentence ''and 10 U.S.C. 2307''. The revised text reads as follows:

32.102 Description of contract financing methods.

* * * * *

(b) * * *

(4) Performance-based payments.

* * * * *

(f) Performance-based payments are contract financing payments made on the basis of—

(1) Performance measured by objective, quantifiable methods;

(2) Accomplishment of defined events; or

(3) Other quantifiable measures of results.

32.103 Progress payments under construction contracts.

8. Section 32.103 is amended by revising the section heading to read as set forth above.

9. Section 32.104 is amended by adding paragraphs (c) and (d) to read as follows:

32.104 Providing contract financing.

* * * * *

(c) Subject to specific agency regulations, the contracting officer may provide customary contract financing in accordance with 32.113. Unusual contract financing shall not be provided except as authorized in 32.114.

(d) Unless otherwise authorized by agency regulation, contract financing may be provided for contracts with—

(1) Small business concerns, when the contract price will be greater than the simplified acquisition threshold; or

(2) Other than small business concerns, when the contract price will be $1 million or more, or for a group of contracts, whose prices are greater than the simplified acquisition threshold, that total $1 million or more.

9. Section 32.106 is amended in the introductory text by inserting after ''Government's'' the word ''best''; and by revising paragraphs (b) and (d) to read as follows:

32.106 Order of preference.

* * * * *

(b) Customary contract financing (see 32.113).

* * * * *

(d) Unusual contract financing (see 32.114).

* * * * *

32.110 [Reserved]

10. Section 32.110 is removed and reserved.

32.111 Contract clauses for non-commercial purchases.

11. The section heading for 32.111 is revised to read as set forth above.

12. Sections 32.113 and 32.114 are added to read as follows:

32.113 Customary contract financing.

The following contract financing arrangements are customary contract financing when provided in accordance with this part and agency regulations:

(a) Financing of shipbuilding, or ship conversion, alteration, or repair, when agency regulations provide for progress payments based on a percentage or stage of completion;

(b) Financing of construction or architect-engineer services purchased under the authority of part 36;

(c) Financing of contracts for supplies or services awarded under the sealed bid method of procurement in accordance with part 14, or under the competitive negotiation method of procurement in accordance with part 15, through progress payments based on costs in accordance with subpart 32.5;

(d) Financing of contracts for supplies or services awarded under a sole-source acquisition as defined in part 6 and using the procedures of part 15, through either progress payments based on costs in accordance with subpart 32.5, or performance-based payments in accordance with subpart 32.10 (but not both). Performance-based payments are the preferred method when the contracting officer finds them practical, and the contractor agrees to their use;

(e) Financing of contracts for supplies or services through advance payments in accordance with subpart 32.4;

(f) Financing of contracts for supplies or services through guaranteed loans in accordance with subpart 32.3; or

(g) Financing of contracts for supplies or services through any appropriate combination of advance payments, guaranteed loans, and either performance-based payments or progress payments (but not both) in accordance with their respective subparts.

32.114 Unusual contract financing.

Any contract financing arrangement that deviates from this part is unusual contract financing. Unusual contract financing shall be authorized only after approval by the head of the agency or as provided for in agency regulations.

13. Subpart 32.2, consisting of sections 32.200 through 32.207, is added to read as follows:

Subpart 32.2—Commercial Item Purchase Financing

Sec.

32.200 Scope of subpart.
32.201 Statutory authority.
32.202 General.
32.202–1 Policy.
32.202–2 Types of payments for commercial item purchases.
32.202–3 Conducting market research about financing terms.
32.202–4 Security for Government financing.
32.203 Determining contract financing terms.
32.204 Procedures for contracting officer-specified commercial contract financing.
32.205 Procedures for offeror-proposed commercial contract financing.
32.206 Solicitation provisions and contract clauses.
32.207 Administration and payment of commercial financing payments.

Subpart 32.2—Commercial Item Purchase Financing

32.200 Scope of subpart.

This subpart provides policies and procedures for commercial financing arrangements under commercial purchases pursuant to Part 12.

32.201 Statutory authority.

10 U.S.C. 2307(f) and 41 U.S.C. 255(f) provide that payment for commercial items may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interest of the United States.

32.202 General.

32.202–1 Policy.

(a) *Use of financing in contracts.* It is the responsibility of the contractor to provide all resources needed for performance of the contract. Thus, for purchases of commercial items, financing of the contract is normally the contractor's responsibility. However, in some markets the provision of financing by the buyer is a commercial practice. In these circumstances, the contracting officer may include appropriate financing terms in contracts for commercial purchases when doing so will be in the best interest of the Government.

(b) *Authorization.* Commercial interim payments and commercial advance payments may be made under the following circumstances—

(1) The contract item financed is a commercial supply or service;

(2) The contract price exceeds the simplified acquisition threshold in part 13;

(3) The contracting officer determines that it is appropriate or customary in the

commercial marketplace to make financing payments for the item;

(4) Authorizing this form of contract financing is in the best interest of the Government (see paragraph (e) of this subsection);

(5) Adequate security is obtained (see 32.202–4);

(6) Prior to any performance of work under the contract, the aggregate of commercial advance payments shall not exceed 15 percent of the contract price;

(7) The contract is awarded on the basis of competitive procedures or, if only one offer is solicited, adequate consideration is obtained (based on the time value of the additional financing to be provided) if the financing is expected to be substantially more advantageous to the offeror than the offeror's normal method of customer financing; and

(8) The contracting officer obtains concurrence from the payment office concerning liquidation provisions when required by 32.206(e).

(c) *Difference from non-commercial financing.* Government financing of commercial purchases under this subpart is expected to be different from that used for non-commercial purchases under subpart 32.1 and its related subparts. While the contracting officer may adapt techniques and procedures from the non-commercial subparts for use in implementing commercial contract financing arrangements, the contracting officer must have a full understanding of effects of the differing contract environments and of what is needed to protect the interests of the Government in commercial contract financing.

(d) *Unusual contract financing.* Any contract financing arrangement not in accord with the requirements of agency regulations or this part is unusual contract financing and requires advance approval in accordance with agency procedures. If not otherwise specified, such unusual contract financing shall be approved by the head of the contracting activity.

(e) *Best interest of the Government.* The statutes cited in 32.201 do not allow contract financing by the Government unless it is in the best interest of the United States. Agencies may establish standards to determine whether contract financing is in the best interest of the Government. These standards may be for certain types of procurements, certain types of items, or certain dollar levels of procurements.

32.202–2 Types of payments for commercial item purchases.

These definitions incorporate the requirements of the statutory commercial financing authority and the implementation of the Prompt Payment Act.

Commercial advance payment means a payment made before any performance of work under the contract. The aggregate of these payments shall not exceed 15 percent of the contract price. These payments are contract financing payments for prompt payment purposes (*i.e.*, not subject to the interest penalty provisions of the Prompt Payment Act in accordance with subpart 32.9). These payments are not subject to subpart 32.4, Advance Payments for Non-Commercial Items.

Commercial interim payment means any payment that is not a commercial advance payment or a delivery payment. These payments are contract financing payments for prompt payment purposes (*i.e.*, not subject to the interest penalty provisions of the Prompt Payment Act in accordance with subpart 32.9). A commercial interim payment is given to the contractor after some work has been done, whereas a commercial advance payment is given to the contractor when no work has been done.

Delivery payment means a payment for accepted supplies or services, including payments for accepted partial deliveries. Commercial financing payments are liquidated by deduction from these payments. Delivery payments are invoice payments for prompt payment purposes.

32.202–3 Conducting market research about financing terms.

Contract financing may be a subject included in the market research conducted in accordance with part 10. If market research for contract financing is conducted, the contracting officer should consider—

(a) The extent to which other buyers provide contract financing for purchases in that market;

(b) The overall level of financing normally provided;

(c) The amount or percentages of any payments equivalent to commercial advance payments (see 32.202–2);

(d) The basis for any payments equivalent to commercial interim payments (see 32.202–2), as well as the frequency, and amounts or percentages; and

(e) Methods of liquidation of contract financing payments and any special or unusual payment terms applicable to delivery payments (see 32.202–2).

32.202–4 Security for Government financing.

(a) *Policy.* (1) 10 U.S.C. 2307(f) and 41 U.S.C. 255(f) require the Government to obtain adequate security for Government financing. The contracting officer shall specify in the solicitation the type of security the Government will accept. If the Government is willing to accept more than one form of security, the offeror shall be required to specify the form of security it will provide. If acceptable to the contracting officer, the resulting contract shall specify the security (see 32.206(b)(1)(iv)).

(2) Subject to agency regulations, the contracting officer may determine the offeror's financial condition to be adequate security, provided the offeror agrees to provide additional security should that financial condition become inadequate as security (see paragraph (c) of the clause at 52.232–29, Terms for Financing of Purchases of Commercial Items). Assessment of the contractor's financial condition shall consider both net worth and liquidity. If the contracting officer finds the offeror's financial condition is not adequate security, the contracting officer shall require other adequate security. Paragraphs (b), (c), and (d) of this subsection list other (but not all) forms of security that the contracting officer may find acceptable.

(3) The value of the security must be at least equal to the maximum unliquidated amount of contract financing payments to be made to the contractor. The value of security may be adjusted periodically during contract performance, as long as it is always equal to or greater than the amount of unliquidated financing.

(b) *Paramount lien.* (1) The statutes cited in 32.201 provide that if the Government's security is in the form of a lien, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(2) When the Government's security is in the form of a lien, the contract shall specify what the lien is upon, *e.g.*, the work in process, the contractor's plant, or the contractor's inventory. Contracting officers may be flexible in the choice of assets. The contract must also give the Government a right to verify the existence and value of the assets.

(3) Provision of Government financing shall be conditioned upon a contractor certification that the assets subject to the lien are free from any prior encumbrances. Prior liens may result from such things as capital equipment loans, installment purchases, working capital loans, various lines of credit, and revolving credit arrangements.

(c) *Other assets as security.* Contracting officers may consider the guidance at 28.203–2, 28.203–3, and 28.204 in determining which types of

assets may be acceptable as security. For the purpose of applying the guidance in part 28 to this subsection, the term ''surety'' and/or ''individual surety'' should be interpreted to mean ''offeror'' and/or ''contractor.''

(d) *Other forms of security.* Other acceptable forms of security include—

(1) An irrevocable letter of credit from a federally insured financial institution;

(2) A bond from a surety, acceptable in accordance with part 28 (note that the bond must guarantee repayment of the unliquidated contract financing);

(3) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership to the contractor; or

(4) Title to identified contractor assets of adequate worth.

(e) *Management of risk and security.* In establishing contract financing terms, the contracting officer must be aware of certain risks. For example, very high amounts of financing early in the contract (front-end loading) may unduly increase the risk to the Government. The security and the amounts and timing of financing payments must be analyzed as a whole to determine whether the arrangement will be in the best interest of the Government.

32.203 Determining contract financing terms.

When the criteria in 32.202–1(b) are met, the contracting officer may either specify the financing terms in the solicitation (see 32.204) or permit each offeror to propose its own customary financing terms (see 32.205). When the contracting officer has sufficient information on financing terms that are customary in the commercial marketplace for the item, those terms may be specified in the solicitation.

32.204 Procedures for contracting officer-specified commercial contract financing.

The financing terms shall be included in the solicitation. Contract financing shall not be a factor in the evaluation of resulting proposals, and proposals of alternative financing terms shall not be accepted (but see 14.208 and 15.606 concerning amendments of solicitations). However, an offer stating that the contracting officer-specified contract financing terms will not be used by the offeror does not alter the evaluation of the offer, nor does it render the offer nonresponsive or otherwise unacceptable. In the event of award to an offeror who declined the proposed contract financing, the contract financing provisions shall not be included in the resulting contract. Contract financing shall not be a basis for adjusting offerors' proposed prices, because the effect of contract financing is reflected in each offeror's proposed prices.

32.205 Procedures for offeror-proposed commercial contract financing.

(a) Under this procedure, each offeror may propose financing terms. The contracting officer must then determine which offer is in the best interests of the United States.

(b) *Solicitations.* The contracting officer shall include in the solicitation the provision at 52.232–31, Invitation to Propose Financing Terms. The contracting officer shall also—

(1) Specify the delivery payment (invoice) dates that will be used in the evaluation of financing proposals; and

(2) Specify the interest rate to be used in the evaluation of financing proposals (see paragraph (c)(4) of this section).

(c) *Evaluation of proposals.* (1) When contract financing terms vary among offerors, the contracting officer must adjust each proposed price for evaluation purposes to reflect the cost of providing the proposed financing in order to determine the total cost to the Government of that particular combination of price and financing.

(2) Contract financing results in the Government making payments earlier than it otherwise would. In order to determine the cost to the Government of making payments earlier, the contracting officer must compute the imputed cost of those financing payments and add it to the proposed price to determine the evaluated price for each offeror.

(3) The imputed cost of a single financing payment is the amount of the payment multiplied by the annual interest rate, multiplied by the number of years, or fraction thereof, between the date of the financing payment and the date the amount would have been paid as a delivery payment. The imputed cost of financing is the sum of the imputed costs of each of the financing payments.

(4) The time value of proposal-specified contract financing arrangements shall be calculated using as the interest rate the Nominal Discount Rate specified in Appendix C of OMB Circular A–94, ''Benefit-Cost Analysis of Federal Programs; Guidelines and Discounts'', appropriate to the period of contract financing. Where the period of proposed financing does not match the periods in the OMB Circular, the interest rate for the period closest to the finance period shall be used. Appendix C is updated yearly, and is available from the Office of Economic Policy in the Office of Management and Budget (OMB).

32.206 Solicitation provisions and contract clauses.

(a) The contract shall contain the paragraph entitled ''Payment'' of the clause at 52.212–4, Contract Terms and Conditions—Commercial Items. If the contract will provide for contract financing, the contracting officer shall construct a solicitation provision and contract clause. This solicitation provision shall be constructed in accordance with 32.204 or 32.205. If the procedure at 32.205 is used, the solicitation provision at 52.232–31, Invitation to Propose Financing Terms, shall be included. The contract clause shall be constructed in accordance with the requirements of this subpart and any agency regulations.

(b) Each contract financing clause shall include:

(1) A description of the—

(i) Computation of the financing payment amounts (see paragraph (c) of this section);

(ii) Specific conditions of contractor entitlement to those financing payments (see paragraph (c) of this section);

(iii) Liquidation of those financing payments by delivery payments (see paragraph (e) of this section);

(iv) Security the contractor will provide for financing payments and any terms or conditions specifically applicable thereto (see 32.202–4); and

(v) Frequency, form, and any additional content of the contractor's request for financing payment (in addition to the requirements of the clause at 52.232–29, Terms for Financing of Purchases of Commercial Items; and

(2) Unless agency regulations authorize alterations, the unaltered text of the clause at 52.232–29, Terms for Financing of Purchases of Commercial Items.

(c) *Computation of amounts, and contractor entitlement provisions.* (1) Contracts shall provide that delivery payments shall be made only for completed supplies and services accepted by the Government in accordance with the terms of the contract. Contracts may provide for commercial advance and commercial interim payments based upon a wide variety of bases, including (but not limited to) achievement or occurrence of specified events, the passage of time, or specified times prior to the delivery date(s). The basis for payment must be objectively determinable. The clause written by the contracting officer shall specify, to the extent access is necessary, the information and/or facilities to which the Government shall have access for the purpose of verifying

the contractor's entitlement to payment of contract financing.

(2) If the contract is awarded using the offeror-proposed procedure at 32.205, the clause constructed by the contracting officer under paragraph (b)(1) of this section shall contain the following:

(i) A statement that the offeror's proposed listing of earliest times and greatest amounts of projected financing payments submitted in accordance with paragraph (d)(2) of the provision at 52.232–31, Invitation to Propose Financing Terms, is incorporated into the contract, and

(ii) A statement that financing payments shall be made in the lesser amount and on the later of the date due in accordance with the financing terms of the contract, or in the amount and on the date projected in the listing of earliest times and greatest amounts incorporated in the contract.

(3) If the security accepted by the contracting officer is the contractor's financial condition, the contracting officer shall incorporate in the clause constructed under paragraph (b)(1) of this section the following—

(i) A statement that the contractor's financial condition has been accepted as adequate security for commercial financing payments; and

(ii) A statement that the contracting officer may exercise the Government's rights to require other security under paragraph (c), Security for Government Financing, of the clause at 52.232–29, Terms for Financing of Purchases of Commercial Items, in the event the contractor's financial condition changes and is found not to be adequate security.

(d) *Instructions for multiple appropriations.* If contract financing is to be computed for the contract as a whole, and if there is more than one appropriation account (or subaccount) funding payments under the contract, the contracting officer shall include, in the contract, instructions for distribution of financing payments to the respective funds accounts. Distribution instructions and contract liquidation instructions must be mutually consistent.

(e) *Liquidation.* Liquidation of contract financing payments shall be on the same basis as the computation of contract financing payments; that is, financing payments computed on a whole contract basis shall be liquidated on a whole contract basis; and a payment computed on a line item basis shall be liquidated against that line item. If liquidation is on a whole contract basis, the contracting officer shall use a uniform liquidation percentage as the liquidation method, unless the contracting officer obtains the concurrence of the cognizant payment office that the proposed liquidation provisions can be executed by that office, or unless agency regulations provide alternative liquidation methods.

(f) *Prompt payment for commercial purchase payments.* The provisions of subpart 32.9, Prompt Payment, apply to contract financing and invoice payments for commercial purchases in the same manner they apply to non-commercial purchases. The contracting officer is responsible for including in the contract all the information necessary to implement prompt payment. In particular, contracting officers must be careful to clearly differentiate in the contract between contract financing and invoice payments and between items having different prompt payment times.

(g) *Installment payment financing for commercial items.* Contracting officers may insert the clause at 52.232–30, Installment Payments for Commercial Items, in solicitations and contracts in lieu of constructing a specific clause in accordance with paragraphs (b) through (e) of this section, if the contract action qualifies under the criteria at 32.202–1(b) and installment payments for the item are either customary or are authorized in accordance with agency procedures.

(1) *Description.* Installment payment financing is payment by the Government to a contractor of a fixed number of equal interim financing payments prior to delivery and acceptance of a contract item. The installment payment arrangement is designed to reduce administrative costs. However, if a contract will have a large number of deliveries, the administrative costs may increase to the point where installment payments are not in the best interests of the Government.

(2) *Authorized types of installment payment financing and rates.* Installment payments may be made using the clause at 52.232–30, Installment Payments for Commercial Items, either at the 70 percent financing rate cited in the clause or at a lower rate in accordance with agency procedures.

(3) *Calculating the amount of installment financing payments.* The contracting officer shall identify in the contract schedule those items for which installment payment financing is authorized. Monthly installment payment amounts are to be calculated by the contractor pursuant to the instructions in the contract clause only for items authorized to receive installment payment financing.

(4) *Liquidating installment payments.* If installment payments have been made for an item, the amount paid to the contractor upon acceptance of the item by the Government shall be reduced by the amount of installment payments made for the item. The contractor's request for final payment for each item is required to show this calculation.

32.207 Administration and payment of commercial financing payments.

(a) *Responsibility.* The contracting officer responsible for administration of the contract shall be responsible for review and approval of contract financing requests.

(b) *Approval of financing requests.* Unless otherwise provided in agency regulations, or by agreement with the appropriate payment official—

(1) The contracting officer shall be responsible for receiving, approving, and transmitting all contract financing requests to the appropriate payment office; and

(2) Each approval shall specify the amount to be paid, necessary contractual information, and the account(s) (see 32.206(d)) to be charged for the payment.

(c) *Management of security.* After contract award, the contracting officer responsible for approving requests for financing payments shall be responsible for determining that the security continues to be adequate. If the contractor's financial condition is the Government's security, this contracting officer is also responsible for monitoring the contractor's financial condition.

Subpart 32.4—Advance Payments for Non-Commercial Items

14. Subpart 32.4 heading is revised to read as set forth above.

15. Section 32.400 is amended by adding a third sentence to read as follows:

32.400 Scope of subpart.

* * * This subpart does not apply to commercial advance payments, which are subject to subpart 32.2.

16. Section 32.501–1 is amended by revising paragraph (d) to read as follows:

32.501–1 Customary progress payment rates.

* * * * *

(d) In accordance with the Defense Procurement Improvement Act of 1986 (Public Law 99–145), as amended, and for civilian agencies, in accordance with 41 U.S.C. 255, as amended, progress payments are limited to 80 percent on work accomplished under undefinitized contract actions. A higher rate is not authorized under unusual progress payments or other customary progress payments for the undefinitized actions.

32.501–4 [Reserved]

17. Section 32.501–4 is removed and reserved.

18. Section 32.502–1 is amended in paragraph (a) introductory text by removing the phrase ''paragraphs (b) and (c) below,'' and inserting in its place ''paragraph (b) of this subsection,''; by revising paragraph (b) introductory text and (b)(1); by removing paragraph (c); by redesignating paragraph (d) as paragraph (c); and in newly designated paragraph (c)(1) by removing the phrase ''through (c) above,'' and inserting in its place ''and (b) of this subsection,''. The revised text reads as follows:

32.502–1 Use of customary progress payments.

* * * * *

(b) To reduce undue administrative effort and expense, unless otherwise provided in agency regulations, the contracting officer shall not provide for progress payments on contracts of less than $1 million unless—

(1) The contractor is a small business concern and the contract will be equal to or greater than the simplified acquisition threshold; or

* * * * *

19. Subpart 32.10, consisting of sections 32.1000 through 32.1010, is added to read as follows:

Subpart 32.10—Performance-Based Payments

Sec.

32.1000 Scope of subpart.
32.1001 Policy.
32.1002 Bases for performance-based payments.
32.1003 Criteria for use.
32.1004 Procedure.
32.1005 Contract clauses.
32.1006 Agency approvals.
32.1007 Administration and payment of performance-based payments.
32.1008 Suspension or reduction of performance-based payments.
32.1009 Title.
32.1010 Risk of loss.

32.1000 Scope of subpart.

This subpart provides policy and procedures for performance-based payments under non-commercial purchases pursuant to subpart 32.1. This subpart does not apply to—

(a) Payments under cost-reimbursement contracts;

(b) Contracts for architect-engineer services or construction, or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based upon a percentage or stage of completion;

(c) Contracts for research or development; or

(d) Contracts awarded through sealed bid or competitive negotiation procedures.

32.1001 Policy.

(a) Performance-based payments are contract financing payments that are not payment for accepted items.

(b) Performance-based payments are fully recoverable, in the same manner as progress payments, in the event of default. Except as provided in 32.1003(c), performance-based payments shall not be used when other forms of contract financing are provided.

(c) For Government accounting purposes, performance-based payments should be treated like progress payments based on costs under subpart 32.5.

(d) Performance-based payments are contract financing payments and, therefore, are not subject to the interest-penalty provisions of prompt payment (see subpart 32.9). However, these payments shall be made in accordance with the agency's policy for prompt payment of contract financing payments.

(e) Performance-based payments are the preferred financing method when the contracting officer finds them practical, and the contractor agrees to their use.

32.1002 Bases for performance-based payments.

Performance-based payments may be made on any of the following bases:

(a) Performance measured by objective, quantifiable methods;

(b) Accomplishment of defined events; or

(c) Other quantifiable measures of results.

32.1003 Criteria for use.

Performance-based payments shall be used only if the following conditions are met:

(a) The contracting officer and offeror are able to agree on the performance-based payment terms;

(b) The contract is a definitized fixed-price type contract (but see 32.1005(b)); and

(c) The contract does not provide for other methods of contract financing, except that advance payments in accordance with subpart 32.4, or guaranteed loans in accordance with subpart 32.3 may be used.

32.1004 Procedure.

Performance-based payments may be made either on a whole contract or on a deliverable item basis, unless otherwise prescribed by agency regulations. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item. (A deliverable item for these purposes is a separate item with a distinct unit price. Thus, a contract line item for 10 airplanes, with a unit price of $1,000,000 each, has ten deliverable items—the separate planes. A contract line item for 1 lot of 10 airplanes, with a lot price of $10,000,000, has only one deliverable item—the lot.)

(a) *Establishing performance bases.* (1) The basis for performance-based payments may be either specifically described events (*e.g.,* milestones) or some measurable criterion of performance. Each event or performance criterion that will trigger a finance payment shall be an integral and necessary part of contract performance and shall be identified in the contract, along with a description of what constitutes successful performance of the event or attainment of the performance criterion. The signing of contracts or modifications, the exercise of options, or other such actions shall not be events or criteria for performance-based payments. An event need not be a critical event in order to trigger a payment, but successful performance of each such event or performance criterion shall be readily verifiable.

(2) Events or criteria may be either severable or cumulative. The successful completion of a severable event or criterion is independent of the accomplishment of any other event or criterion. Conversely, the successful accomplishment of a cumulative event or criterion is dependent upon the previous accomplishment of another event. A contract may provide for more than one series of severable and/or cumulative performance events or criteria performed in parallel. The following shall be included in the contract:

(i) The contract shall not permit payment for a cumulative event or criterion until the dependent event or criterion has been successfully completed.

(ii) Severable events or criteria shall be specifically identified in the contract.

(iii) The contract shall identify which events or criteria are preconditions for the successful achievement of each cumulative event or criterion.

(iv) If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criterion shall be part of the performance necessary for that

deliverable item and shall be identified to a specific contract line item or subline item.

(b) *Establishing performance-based finance payment amounts.* (1) The contracting officer shall establish a complete, fully defined schedule of events or performance criteria and payment amounts when negotiating contract terms. If a contract action significantly affects the price, or event or performance criterion, the contracting officer responsible for pricing the contract modification shall adjust the performance-based payment schedule appropriately.

(2) Total performance-based payments shall not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis. The amount of each performance-based payment shall be specifically stated either as a dollar amount or as a percentage of a specifically identified price (e.g., contract price, or unit price of the deliverable item). The payment of contract financing has a cost to the Government in terms of interest paid by the Treasury to borrow funds to make the payment. Because the contracting officer has wide discretion as to the timing and amount of the performance-based payments, the contracting officer must ensure that the total contract price is fair and reasonable, all factors (including the financing costs to the Treasury of the performance-based payments) considered. Performance-based payment amounts may be established on any rational basis determined by the contracting officer, or agency procedures, which may include (but are not limited to)—

(i) Engineering estimates of stages of completion;

(ii) Engineering estimates of hours or other measures of effort to be expended in performance of an event or achievement of a performance criterion; or

(iii) The estimated projected cost of performance of particular events.

(3) When subsequent contract modifications are issued, the performance-based payment schedule shall be adjusted as necessary to reflect the actions required by those contract modifications.

(c) *Instructions for multiple appropriations.* If there is more than one appropriation account (or subaccount) funding payments on the contract, the contracting officer shall provide instructions to the Government payment office for distribution of financing payments to the respective funds accounts. Distribution instructions must be consistent with the contract's liquidation provisions.

(d) *Liquidating performance-based finance payments.* Performance-based amounts shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payments. The contracting officer shall specify the liquidation rate or designated dollar amount in the contract. The method of liquidation shall ensure complete liquidation no later than final payment.

(1) If the performance-based payments are established on a delivery item basis, the liquidation amount for each line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.

(2) If the performance-based finance payments are on a whole contract basis, liquidation shall be by predesignated liquidation amounts or liquidation percentages.

32.1005 Contract clauses.

(a) If performance-based contract financing will be provided, the contracting officer shall insert the clause at 52.232–32, Performance-Based Payments, in the solicitation and contract with the description of the basis for payment and liquidation as required in 32.1004.

(b) In solicitations for undefinitized contracts, the contracting officer may include the clause at 52.232–32, Performance-Based Payments, with a provision that the clause is not effective until the contract is definitized and the performance-based payment schedule is included in the contract.

32.1006 Agency approvals.

The contracting officer shall obtain such approvals as are required by agency regulations.

32.1007 Administration and payment of performance-based payments.

(a) *Responsibility.* The contracting officer responsible for administration of the contract shall be responsible for review and approval of performance-based payments.

(b) *Approval of financing requests.* Unless otherwise provided in agency regulations, or by agreement with the appropriate payment official—

(1) The contracting officer shall be responsible for receiving, approving, and transmitting all performance-based payment requests to the appropriate payment office; and

(2) Each approval shall specify the amount to be paid, necessary contractual information, and the appropriation account(s) (see 32.1004(c)) to be charged for the payment.

(c) *Reviews.* The contracting officer is responsible for determining what reviews are required for protection of the Government's interests. The contracting officer should consider the contractor's 0experience, performance record, reliability, financial strength, and the adequacy of controls established by the contractor for the administration of performance-based payments. Based upon the risk to the Government, post-payment reviews and verifications should normally be arranged as considered appropriate by the contracting officer. If considered necessary by the contracting officer, pre-payment reviews may be required.

(d) *Incomplete performance.* The contracting officer shall not approve a performance-based payment until the specified event or performance criterion has been successfully accomplished in accordance with the contract. If an event is cumulative, the contracting officer shall not approve the performance-based payment unless all identified preceding events or criteria are accomplished.

(e) *Government-caused delay.* Entitlement to a performance-based payment is solely on the basis of successful performance of the specified events or performance criteria. However, if there is a Government-caused delay, the contracting officer may renegotiate the performance-based payment schedule, to facilitate contractor billings for any successfully accomplished portions of the delayed event or criterion.

32.1008 Suspension or reduction of performance-based payments.

The contracting officer shall apply the policy and procedures in paragraphs (a), (b), (c), and (e) of 32.503–6, Suspension or reduction of payments, whenever exercising the Government's rights to suspend or reduce performance-based payments in accordance with paragraph (e) of the clause at 52.232–32, Performance-Based Payments.

32.1009 Title.

(a) Since the clause at 52.232–32, Performance-Based Payments, gives the Government title to the property described in paragraph (f) of the clause, the contracting officer must ensure that the Government title is not compromised by other encumbrances. Ordinarily, the contracting officer, in the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the payment request.

(b) If the contracting officer becomes aware of any arrangement or condition that would impair the Government's title to the property affected by the Performance-Based Payments clause, the contracting officer shall require additional protective provisions.

(c) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the contracting officer may, if necessary, suspend or reduce payments under the terms of the Performance-Based Payments clause covering failure to comply with a material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the certification, the contracting officer should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, the False Claims Act.

32.1010 Risk of loss.

(a) Under the clause at 52.232–32, Performance-Based Payments, and except for normal spoilage, the contractor bears the risk for loss, theft, destruction, or damage to property affected by the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. The clauses prescribed in this regulation related to performance-based payments, default, and terminations do not constitute a Government assumption of risk.

(b) If a loss occurs in connection with property for which the contractor bears the risk, and the property is needed for performance, the contractor is obligated to repay the Government the performance-based payments related to the property.

(c) The contractor is not obligated to pay for the loss of property for which the Government has assumed the risk of loss. However, a serious loss may impede the satisfactory progress of contract performance, so that the contracting officer may need to act under paragraph (e)(2) of the Performance-Based Payments clause. In addition, while the contractor is not required to repay previous performance-based payments in the event of a loss for which the Government has assumed the risk, such a loss may prevent the contractor from making the certification required by the Performance-Based Payments clause.

PART 42—CONTRACT ADMINISTRATION

20. Section 42.302 is amended by revising paragraph (a)(12) and adding (a)(69) to read as follows:

42.302 Contract administration functions.

(a) * * *

(12) Review and approve or disapprove the contractor's requests for payments under the progress payments or performance-based payments clauses.

* * * * *

(69) Administer commercial financing provisions and monitor contractor security to ensure its continued adequacy to cover outstanding payments, when on-site review is required.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

21. Sections 52.232–29 through 52.232–32 are added to read as follows:

52.232–29 Terms for Financing of Purchases of Commercial Items.

As prescribed in 32.206(b)(2), insert the following clause:

Terms for Financing of Purchases of Commerical Items (Oct 1995)

(a) *Contractor entitlement to financing payments.* The Contractor may request, and the Government shall pay, a contract financing payment as specified elsewhere in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or services due under the contract will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract.

(b) *Special terms regarding termination for cause.* If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated contract financing payments. The Government shall be liable for no payment except as provided by the Termination for Cause paragraph of the clause at 52.212–4, Contract Terms and Conditions—Commercial Items.

(c) *Security for Government financing.* In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment shall be made under this contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(d) *Reservation of rights.* (1) No payment or other action by the Government under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(e) *Content of Contractor's request for financing payment.* The Contractor's request for financing payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for financing payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made; and

(4) An appropriately itemized and totaled statement of the financing payments requested and such other information as is necessary for computation of the payment, prepared in accordance with the direction of the Contracting Officer.

(f) *Limitation on frequency of financing payments.* Contractor financing payments shall be provided no more frequently than monthly.

(g) In the event of any conflict between the terms proposed by the offeror in response to an invitation to propose financing terms (52.232–31) and the terms in this clause, the terms of this clause shall govern.

(End of clause)

52.232–30 Installment Payments for Commercial Items.

As prescribed in 32.206(g), insert the following clause:

Installment Payments for Commerical Items (Oct 1995)

(a) *Contractor entitlement to financing payments.* The Contractor may request, and the Government shall pay, a contract financing installment payment as specified in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or services due under the contract will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract.

(b) *Computation of amounts.* Installment payment financing shall be paid to the Contractor when requested for each separately priced unit of supply (but not for services) of each contract line item in amounts approved by the Contracting Officer pursuant to this clause.

(1) *Number of installment payments for each contract line item.* Each separately priced unit of each contract line item is authorized a fixed number of monthly

installment payments. The number of installment payments authorized for each unit of a contract line item is equal to the number of months from the date of contract award to the date one month before the first delivery of the first separately priced unit of the contract line item. For example, if the first scheduled delivery of any separately priced unit of a contract line item is 9 months after award of the contract, all separately priced units of that contract line item are authorized 8 installment payments.

(2) *Amount of each installment payment.* The amount of each installment payment for each separately priced unit of each contract line item is equal to 70 percent of the unit price divided by the number of installment payments authorized for that unit.

(3) *Date of each installment payment.* Installment payments for any particular separately priced unit of a contract line item begin the number of months prior to the delivery of that unit that are equal to the number of installment payments authorized for that unit. For example, if 8 installment payments are authorized for each separately priced unit of a contract line item, the first installment payment for any particular unit of that contract line item would be 8 months before the scheduled delivery date for that unit. The last installment payment would be 1 month before scheduled delivery of a unit.

(4) *Limitation on payment.* Prior to the delivery payment for a separately priced unit of a contract line item, the sum of all installment payments for that unit shall not exceed 70 percent of the price of that unit.

(c) *Contractor request for installment payment.* The Contractor may submit requests for payment of installment payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all installment payments in any month for which payment is being requested shall be included in a single request, appropriately itemized and totaled.

(d) *Dates for payment.* An installment payment under this clause is a contract financing payment under the Prompt Payment clause of this contract, and except as provided in paragraph (e) of this clause, approved requests shall be paid within 30 days of submittal of a proper request for payment.

(e) *Liquidation of installment payments.* Installment payments shall be liquidated by deducting from the delivery payment of each item the total unliquidated amount of installment payments made for that separately priced unit of that contract line item. The liquidation amounts for each unit of each line item shall be clearly delineated in each request for delivery payment submitted by the Contractor.

(f) *Security for installment payment financing.* In the event the Contractor fails to provide adequate security as required in this contract, no financing payment shall be made under this contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the contract. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided, and suspend further payments to the Contractor; the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(g) *Special terms regarding termination for cause.* If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated installment payments. The Government shall be liable for no payment except as provided by the Termination for Cause paragraph of the clause at 52.212–4, Contract Terms and Conditions—Commercial Items.

(h) *Reservation of rights.* (1) No payment, vesting of title under this clause, or other action taken by the Government under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract, and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(i) *Content of Contractor's request for installment payment.* The Contractor's request for installment payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for installment payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made; and

(4) An itemized and totaled statement of the items, installment payment amount, and month for which payment is being requested, for each separately priced unit of each contract line item.

(End of clause)

52.232–31 Invitation to Propose Financing Terms.

As prescribed in 32.205(b) and 32.206, insert the following provision:

Invitation to Propose Financing Terms (Oct 1995)

(a) The offeror is invited to propose terms under which the Government shall make contract financing payments during contract performance. The financing terms proposed by the offeror shall be a factor in the evaluation of the offeror's proposal. The financing terms of the successful offeror and the clause, Terms for Financing of Purchases of Commercial Items, at 52.232–29, shall be incorporated in any resulting contract.

(b) The offeror agrees that in the event of any conflict between the terms proposed by the offeror and the terms in the clause at 52.232–29, Terms for Financing of Purchases of Commercial Items, the terms of the clause at 52.232–29 shall govern.

(c) Because of statutory limitations (10 U.S.C. 2307(f) and 41 U.S.C. 255(f)), the offeror's proposed financing shall not be acceptable if it does not conform to the following limitations:

(1) Delivery payments shall be made only for supplies delivered and accepted, or services rendered and accepted in accordance with the payment terms of this contract;

(2) Contract financing payments shall not exceed 15 percent of the contract price in advance of any performance of work under the contract;

(3) The terms and conditions of the contract financing must be appropriate or customary in the commercial marketplace; and

(4) The terms and conditions of the contract financing must be in the best interests of the United States.

(d) The offeror's proposal of financing terms shall include the following:

(1) The proposed contractual language describing the contract financing (see FAR 32.202–2 for appropriate definitions of types of payments); and

(2) A listing of the earliest date and greatest amount at which each contract financing payment may be payable and the amount of each delivery payment. Any resulting contract shall provide that no contract financing payment shall be made at any earlier date or in a greater amount than shown in the offeror's listing.

(e) The offeror's proposed prices and financing terms shall be evaluated to determine the cost to the United States of the proposal using the interest rate and delivery schedule specified elsewhere in this solicitation.

(End of provision)

52.232–32 Performance-Based Payments.

As prescribed in 32.1005, insert the following clause:

Performance-Based Payments (Oct 1995)

(a) *Amount of payments and limitations on payments.* Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.

(b) *Contractor request for performance-based payment.* The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) *Approval and payment of requests.* (1) The Contractor shall not be entitled to payment of a request for performance-based

payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract, and approved requests shall be paid in accordance with the prompt payment period and provisions specified for contract financing payments by that clause. However, if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification, payment is not required, and the prompt payment period shall not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) *Liquidation of performance-based payments.* (1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) *Reduction or suspension of performance-based payments.* The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's (i) failure to make progress, or (ii) unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f)(1) *Title.* Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) *Property,* as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (f)(2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract (*e.g.*, the termination or special tooling clauses) shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(g) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) *Records and controls.* The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) *Reports and Government access.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) *Special terms regarding default.* If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) *Reservation of rights.* (1) No payment or vesting of title under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract, and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(l) *Content of Contractor's request for performance-based payment.* The Contractor's request for performance-based payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for performance-based payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made;

(4) Such information and documentation as is required by the contract's description of the basis for payment; and

(5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

(m) *Content of Contractor's certification.* As required in paragraph (l)(5) of this clause,

the Contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that—

(1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of the Contracting Officer;

(2) (Except as reported in writing on _____), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;

(3) There are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;

(4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated _____; and

(5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

(End of clause)

[FR Doc. 95–23866 Filed 9–25–95; 8:45 am]

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48 CFR Parts 1, 7, 9, 17, 37, 49, and 52

[FAC 90–33; FAR Case 94–710; Item II]

RIN 9000–AG32

Federal Acquisition Regulation; Special Contracting Methods

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) to implement Section 1074 on the Economy Act; Sections 1503, 1504, 1552, and 1553 on the delegation of procurement functions and determinations and decisions; Section 2454 on advisory and assistance services; and Section 6002 on contracting functions performed by Federal personnel. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Ed McAndrew, Special Contracting Team Leader, at (202) 501–1474 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–33, FAR case 94–710.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements.

This final rule implements sections 1074, 1503, 1504, 1552, 1553, 2454 and 6002 of the Act. Section 1074 concerns the Economy Act. Sections 1503, 1504, 1552, and 1553 deal with the delegation of procurement functions and determinations and decisions. Section 2454 concerns advisory and assistance services. Section 6002 concerns contracting functions performed by Federal personnel.

While the proposed rule included coverage implementing sections 1022 and 1072 dealing with multiyear contracting, that coverage has been removed from this final rule and will be issued separately.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat, Room 4037, GS Building, 18th & F Streets, N.W., Washington, DC, 20405 (202) 501–4755.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

On March 16, 1995, a proposed rule implementing these sections of the Act was published in the Federal Register (60 FR 14340). In response to the notice of proposed rulemaking, 25 comments were received. The comments of all respondents were considered in developing this final rule.

While the proposed rule included coverage implementing sections 1022 and 1072 dealing with multiyear contracting, that coverage has been removed from this final rule and will be issued separately.

Sections 1074, 1503, 1504, 1552, and 1553 dealt with Federal agencies' purchasing of goods and services under contracts entered into or administrated by other agencies. Several comments related to this section were adopted, such as clarification of the text, ensuring that FAR payment and cost principles clauses are included in contracts issued by servicing agencies, and clarifying that the agency head's approval of Economy Act Determination and Findings may be delegated.

Section 2454, Codification of Accounting Requirement for Contracting Advisory and Assistance Services, redefined ''advisory and assistance services''. This was the most controversial issue faced by the team. The redefinition was so broad that the team had little latitude in deciding how to implement it. The team attempted to clarify the definition as much as possible; however, the definition contained in this final rule does not revise the definition to the extent recommended by commentors. Nonetheless, the team feels that it can go no further in revising the definition without violating the intent of the statute. The team has decided to adopt the recommendation to add the definition of Contract for Advisory and Assistance Services (CAAS) contained in OMB Circular A–11 for consistency between the procurement and accounting systems.

Section 6002 concerns the actions Federal agencies are required to take to determine whether expertise is readily available within the Federal Government before contracting for advisory and technical services to conduct acquisitions and the manner in which personnel with expertise may be shared with agencies needing expertise.

List of Subjects in 48 CFR Parts 1, 7, 9, 17, 37, 49, and 52

Government procurement.

Dated: September 20, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 1, 7, 9, 17, 37, 49, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 7, 9, 17, 37, 49, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.601 is revised to read as follows:

1.601 General.

(a) Unless specifically prohibited by another provision of law, authority and responsibility to contract for authorized supplies and services are vested in the agency head. The agency head may establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. Contracts may be entered into and signed on behalf of the Government only by contracting officers. In some agencies, a relatively small number of high level officials are designated contracting officers solely by virtue of their positions. Contracting officers below the level of a head of a contracting activity shall be selected and appointed under 1.603.

(b) Agency heads may mutually agree to—

(1) Assign contracting functions and responsibilities from one agency to another; and

(2) Create joint or combined offices to exercise acquisition functions and responsibilities.

PART 7—ACQUISITION PLANNING

3. Section 7.103 is amended by adding paragraph (o) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(o) Making a determination, prior to issuance of a solicitation for advisory and assistance services involving the analysis and evaluation of proposals submitted in response to a solicitation, that a sufficient number of covered personnel with the training and capability to perform an evaluation and analysis of proposals submitted in response to a solicitation are not readily available within the agency or from another Federal agency in accordance with the guidelines at 37.204.

PART 9—CONTRACTOR QUALIFICATIONS

4. Section 9.507–1 is amended by revising paragraph (d)(1) to read as follows:

9.507–1 Solicitation provisions.

* * * * *

(d) * * *

(1) Services excluded in subpart 37.2;

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

5. Subpart 17.5 is revised to read as follows:

Subpart 17.5—Interagency Acquisitions Under the Economy Act

Sec.

17.500 Scope of subpart.
17.501 Definition.
17.502 General.
17.503 Determinations and findings requirements.
17.504 Ordering procedures.
17.505 Payment.

Subpart 17.5—Interagency Acquisitions Under the Economy Act

17.500 Scope of subpart.

(a) This subpart prescribes policies and procedures applicable to interagency acquisitions under the Economy Act (31 U.S.C. 1535). The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of interagency acquisitions to which the Economy Act does not apply include acquisitions from required sources of supplies prescribed in part 8, which have separate statutory authority.

17.501 Definition.

Interagency acquisition means a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency).

17.502 General.

(a) The Economy Act authorizes agencies to enter into mutual agreements to obtain supplies or services by interagency acquisition.

(b) The Economy Act may not be used by an agency to circumvent conditions and limitations imposed on the use of funds.

(c) Acquisitions under the Economy Act are not exempt from the requirements of subpart 7.3, Contractor Versus Government Performance.

(d) The Economy Act may not be used to make acquisitions conflicting with any other agency's authority or responsibility (for example, that of the Administrator of General Services under the Federal Property and Administrative Services Act).

17.503 Determinations and findings requirements.

(a) Each Economy Act order shall be supported by a Determination and Finding (D&F). The D&F shall state that—

(1) Use of an interagency acquisition is in the best interest of the Government; and

(2) The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

(b) If the Economy Act order requires contracting action by the servicing agency, the D&F shall also include a statement that at least one of the following circumstances is applicable—

(1) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services;

(2) The servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or

(3) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

(c) The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the Federal Acquisition Regulation, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency.

17.504 Ordering procedures.

(a) Before placing an Economy Act order for supplies or services with another Government agency, the requesting agency shall make the D&F required in 17.503. The servicing agency may require a copy of the D&F to be furnished with the order.

(b) The order may be placed on any form or document that is acceptable to both agencies. The order should include—

(1) A description of the supplies or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see 17.505); and

(5) Acquisition authority as may be appropriate (see 17.504(d)).

(c) The requesting and servicing agencies should agree to procedures for the resolution of disagreements that may arise under interagency acquisitions, including, in appropriate circumstances, the use of a third-party forum. If a third party is proposed, consent of the third party should be obtained in writing.

(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures also apply:

(1) If a justification and approval or a D&F (other than the requesting agency's D&F required in 17.503) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval or D&F.

(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing information or special contract terms needed to comply with any condition or limitation applicable to the funds of the requesting agency.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including

(i) Having adequate statutory authority for the contractual action, and

(ii) Complying fully with the competition requirements of part 6 (see 6.002). However, if the servicing agency is not subject to the Federal Acquisition Regulation, the requesting agency shall verify that contracts utilized to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions mandated for FAR agencies by part 31), and that adequate contract administration will be provided.

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and must fall within the purpose, mission, general scope of effort, or special competency of the FFRDC. (See 35.017; see also 6.302 for procedures to follow where using other than full and open competition.) The nonsponsoring agency shall provide to the sponsoring agency necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry.

17.505 Payment.

(a) The servicing agency may ask the requesting agency, in writing, for advance payment for all or part of the estimated cost of furnishing the supplies or services. Adjustment on the basis of actual costs shall be made as agreed to by the agencies.

(b) If approved by the servicing agency, payment for actual costs may be made by the requesting agency after the supplies or services have been furnished.

(c) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.

(d) If the Economy Act order requires use of a contract by the servicing agency, then in no event shall the servicing agency require, or the requiring agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

PART 37—SERVICE CONTRACTING

6. Subpart 37.2 is revised to read as follows:

Subpart 37.2—Advisory and Assistance Services

Sec.

37.200 Scope of subpart.
37.201 Definitions.
37.202 Exclusions.
37.203 Policy.
37.204 Guidelines for determining availability of personnel.
37.205 Contracting officer responsibilities.

37.200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart applies to contracts, whether made with individuals or organizations, that involve either personal or nonpersonal services.

37.201 Definitions.

Advisory and assistance services means those services provided under contract by nongovernmental sources to support or improve: organizational policy development; decision-making; management and administration; program and/or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are to be classified in one of the following definitional subdivisions:

(a) Management and professional support services, *i.e.*, contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative/technical support for conferences and training programs;

(b) Studies, analyses and evaluations, *i.e.*, contracted services that provide organized, analytical assessments/evaluations in support of policy development, decision-making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyses or evaluations; or

(c) Engineering and technical services, *i.e.*, contractual services used to support the program office during the acquisition cycle by providing such services as systems engineering and technical direction (see 9.505–1(b)) to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A–109 or to provide direct support of a weapon system that is essential to research, development, production, operation or maintenance of the system.

Covered personnel, as used in this subpart, means—

(a) An officer or an individual who is appointed in the civil service by one of the following acting in an official capacity:

(1) The President;

(2) A Member of Congress;

(3) A member of the uniformed services;

(4) An individual who is an employee under 5 U.S.C. 2105;

(5) The head of a Government-controlled corporation; or

(6) An adjutant general appointed by the Secretary concerned under 32 U.S.C. 709(c).

(b) A member of the Armed Services of the United States.

(c) A person assigned to a Federal agency who has been transferred to another position in the competitive service in another agency.

37.202 Exclusions.

The following activities and programs are excluded or exempted from the

definition of advisory or assistance services:

(a) Routine Federal information processing services unless they are an integral part of a contract for the acquisition of advisory and assistance services.

(b) Architectural and engineering services as defined in the Brooks Architect-Engineers Act (Section 901 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 541).

(c) Research on theoretical mathematics and basic research involving medical, biological, physical, social, psychological, or other phenomena.

37.203 Policy.

(a) The acquisition of advisory and assistance services is a legitimate way to improve Government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to 37.205, agencies may contract for advisory and assistance services, when essential to the agency's mission, to—

(1) Obtain outside points of view to avoid too limited judgment on critical issues;

(2) Obtain advice regarding developments in industry, university, or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts;

(4) Enhance the understanding of, and develop alternative solutions to, complex issues;

(5) Support and improve the operation of organizations; or

(6) Ensure the more efficient or effective operation of managerial or hardware systems.

(c) Advisory and assistance services shall not be—

(1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation; or

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

(d) *Limitation on payment for advisory and assistance services.* Contractors may not be paid for services to conduct evaluations or analyses of any aspect of a proposal submitted for an initial contract award unless—

(1) Neither covered personnel from the requesting agency, nor from another agency, with adequate training and capabilities to perform the required proposal evaluation, are readily available and a written determination is made in accordance with 37.204;

(2) The contractor is a Federally-Funded Research and Development Center (FFRDC) as authorized in Section 23 of the Office of Federal Procurement Policy (OFPP) Act as amended (41 U.S.C. 419) and the work placed under the FFRDCOs contract meets the criteria of 35.017–3; or

(3) Such functions are otherwise authorized by law.

37.204 Guidelines for determining availability of personnel.

(a) The head of an agency shall determine, for each evaluation or analysis of proposals, if sufficient personnel with the requisite training and capabilities are available within the agency to perform the evaluation or analysis of proposals submitted for the acquisition.

(b) If, for a specific evaluation or analysis, such personnel are not available within the agency, the head of the agency shall—

(1) Determine which Federal agencies may have personnel with the required training and capabilities; and

(2) Consider the administrative cost and time associated with conducting the search, the dollar value of the procurement, other costs, such as travel costs involved in the use of such personnel, and the needs of the Federal agencies to make management decisions on the best use of available personnel in performing the agency's mission.

(c) If the supporting agency agrees to make the required personnel available, the agencies shall execute an agreement for the detail of the supporting agency's personnel to the requesting agency.

(d) If the requesting agency, after reasonable attempts to obtain personnel with the required training and capabilities, is unable to identify such personnel, the head of the agency may make the determination required by 37.203.

(e) An agency may make a determination regarding the availability of covered personnel for a class of proposals for which evaluation and analysis would require expertise so unique or specialized that it is not reasonable to expect such personnel to be available.

37.205 Contracting officer responsibilities.

The contracting officer shall ensure that the determination required in accordance with the guidelines at 37.204 has been made prior to issuing a solicitation.

PART 49—TERMINATION OF CONTRACTS

49.603–1 through 49.603–4 [Amended]

7. Sections 49.603–1(b)(7)(i), 49.603–2(b)(8)(i), 49.603–3(b)(7)(i), and 49.603–4(b)(4)(i)) are amended by removing the phrase ‘‘, and regulations made implementing 10 U.S.C. 2382, as amended, and any other’’ and inserting ‘‘any’’ in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.209–7 is amended by revising the date of the clause and paragraph (a)(1)(i) to read as follows:

52.209–7 Organizational Conflicts of Interest Certificate—Marketing Consultants.

* * * * *

Organizational Conflicts of Interest Certificate—Marketing Consultants (Oct 1995)

(a) * * *

(1) * * *

(i) Services excluded in subpart 37.2;

* * * * *

[FR Doc. 95–23865 Filed 9–25–95; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 5, 6, 16 and 52

[FAC 90–33; FAR Case 94–711; Item III]

RIN 9000–AG50

Federal Acquisition Regulation; Task and Delivery Order Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final and interim rules.

SUMMARY: This final rule along with an interim amendment is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) to implement the statutory requirements of the Act with regard to task and delivery order contracts. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Effective Date:* October 1, 1995.

Comment Date: Comments on the interim rule addition of Section 16.500 should be submitted to the FAR Secretariat at the address shown below on or before November 27, 1995 to be

considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90–33, FAR case 94–711, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ed McAndrew, Special Contracting Team Leader, at (202) 501–1474 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–33, FAR case 94–711.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (the Act) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements.

This final rule implements Sections 1004 and 1054 of the Act. Sections 1004 and 1054 created statutory definitions for ''task order contracts'' and ''delivery order contracts'' and created a statutory preference for making multiple awards of tasks order contracts and delivery order contracts. Sections 1004 and 1054 also established certain limitations on task order contracts for advisory and assistance services.

The final rule creates a preference for making multiple awards of indefinite-quantity contracts. The rule also establishes when multiple awards should not be made.

The final rule contains no specific procedures for making awards of indefinite-quantity contracts in order to empower agencies to develop selection criteria that meet the unique needs of each acquisition. However, the final rule does include guidance with respect to the procedures that may be used for issuing orders under multiple award contracts.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final and interim rule and a Final Regulatory Flexibility Analysis (FRFA) has been prepared. A copy of the Analysis will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final and interim rule does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Federal Acquisition Streamlining Act of 1994 (the Act) requires implementation by October 1, 1995.

A proposed rule was published in the Federal Register on March 16, 1995, to implement Sections 1004 and 1054 of the Act. The rule established a preference scheme for multiple awards of task and delivery order contracts, and placed limitations on the use of contracts for advisory and assistance services. The scope of the proposed rule excluded contracts subject to the procedures of FAR Part 36 (Construction and Architect-Engineer Contracts); Part 38 (Federal Supply Schedule Contracting); Part 39 (Acquisition of Information Resources); and Part 41 (Acquisition of Utility Services).

As a result of public comments on the proposed rule, the scope of the rule has been revised to include (1) construction and architect-engineer services, provided the selection of contractors and placement of orders for architect-engineer services is consistent with FAR Subpart 36.6; (2) Federal information processing resource requirements that are not satisfied under the Federal Supply Schedule Program, provided the selection of contractors and placement of orders is consistent with FAR Part 39; and (3) utility services. The language at FAR 16.500 is being promulgated as an interim rule, instead of a final rule, to reflect the change in scope.

This change is not considered a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, the FAR Council would like to obtain public comment before finalizing this revision to FAR 16.500. Public comments received in response to the interim rule will be considered in formulating the final rule.

E. Public Comments

In response to the notice of proposed rulemaking published at 60 FR 14346, March 16, 1995, 35 comments were received. The more significant changes resulting from the public comments were:

- Modification to Section 16.500 with respect to the applicability of the multiple award preference to architect/engineering services, Federal information processing resource requirements, utility contracts, and GSA's Federal Supply Schedule program.
- Incorporation of greater guidance with respect to procedures to be used in issuing orders under multiple award contracts.

List of Subjects in 48 CFR Parts 5, 6, 16 and 52

Government procurement.

Dated: September 20, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Issuance of Interim Rule

Therefore, 48 CFR Part 16 is amended as set forth below:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR Part 16 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 16.500 is added to read as follows:

16.500 Scope of subpart.

This subpart prescribes policies and procedures for making awards of indefinite delivery contracts and establishes a preference scheme for making multiple awards of delivery order contracts and task order contracts. This subpart does not limit the use of other than competitive procedures authorized by part 6. Nothing in this subpart shall be construed to limit, impair, or restrict the authority of the General Services Administration (GSA) to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law. Therefore, GSA regulations and the coverage in subpart 8.4, part 38, or part 39 for the Federal Supply Schedule program (including contracts for Federal Information Processing resources), take precedence over this subpart. This subpart may be used to acquire

(1) Architect-engineer services, provided the selection of contractors and placement of orders is consistent with subpart 36.6, and

(2) Federal Information Processing resource requirements that are not satisfied under the Federal Supply Schedule Program, provided the selection of contractors and placement of orders is consistent with part 39.

Issuance of Final Rule

Therefore, 48 CFR Parts 5, 6, 16 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 6, 16 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

5.202 and 5.301 [Amended]

2. Sections 5.202(a)(6) and 5.301(b)(4) are amended by removing the phrase ''a requirements contract'' and inserting ''Subpart 16.5'' in their place.

PART 6—COMPETITION REQUIREMENTS

3. Section 6.001 is amended by adding paragraph (f) to read as follows:

6.001 Applicability.

* * * * *

(f) Orders placed against task order and delivery order contracts entered into pursuant to subpart 16.5.

PART 16—TYPES OF CONTRACTS

4. & 5. Section 16.501 is redesignated as 16.501–2 and is amended by revising paragraphs (a) and (c), and a new 16.501–1 is added to read as follows:

16.501–1 Definitions.

As used in this subpart—

Advisory and assistance services has the same meaning as set forth in 37.201.

Delivery order contract means a contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.

Task order contract means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

16.501–2 General.

(a) There are three types of indefinite-delivery contracts: Definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. Pursuant to 10 U.S.C. 2304d and section 303K of the Federal Property and Administrative Services Act of 1949, requirements contracts and indefinite-quantity contracts are also known as delivery order contracts or task order contracts.

* * * * *

(c) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangement under part 16. Cost or pricing arrangements that provide for an estimated quantity of supplies or services (*e.g.*, estimated number of labor hours) must comply with the appropriate procedures of this subpart.

16.502 [Amended]

6. Section 16.502 is amended in paragraph (a) by adding after the word ''deliveries'' the phrase ''or performance''.

7. Section 16.503 is amended by revising paragraph (a) introductory text and (b); and adding paragraph (d) to read as follows:

16.503 Requirements contracts.

(a) *Description.* A requirements contract provides for filling all actual purchase requirements of designated Government activities for supplies or services during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor.

* * * * *

(b) *Application.* A requirements contract may be appropriate for acquiring any supplies or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period.

* * * * *

(d) *Limitations on use of requirements contracts for advisory and assistance services.* (1) Except as provided in paragraph (d)(2) of this section, no solicitation for a requirements contract for advisory and assistance services in excess of three years and $10,000,000 (including all options) may be issued unless the contracting officer or other official designated by the head of the agency determines in writing that the services required are so unique or highly specialized that it is not practicable to make multiple awards using the procedures in 16.504.

(2) The limitation in paragraph (d)(1) of this section is not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services, if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

8. Section 16.504 is amended by revising the introductory text of paragraph (a), and adding paragraph (a)(4); in paragraph (a)(3) by inserting ''task or'' after the word ''each''; by removing the last sentence of paragraph (b); and by adding paragraph (c) to read as follows:

16.504 Indefinite-quantity contracts.

(a) *Description.* An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services to be furnished during a fixed period, with deliveries or performance to be scheduled by placing orders with the contractor.

* * * * *

(4) In addition to other required provisions and clauses, a solicitation and contract for an indefinite quantity shall—

(i) Specify the period of the contract, including the number of options and the period for which the contract may be extended under each option, if any;

(ii) Specify the total minimum and maximum quantity or dollar value of supplies or services to be acquired under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services to be acquired under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(iv) State the procedures that will be used in issuing orders and, if multiple awards may be made, state the procedures and selection criteria that will be used to provide awardees a fair opportunity to be considered for each order (see 16.505(b)(1));

(v) If multiple awards may be made, include the provision at 52.216–27, Single or Multiple Awards, to notify offerors that more than one contract may be awarded; and

(vi) If an award of a task order contract for advisory and assistance services in excess of three years and $10,000,000 (including all options) is anticipated, include the provision at 52.216–28, Multiple Awards for Advisory and Assistance Services, unless a determination to make a single

award is made under paragraph (c)(2)(i)(A) of this section.

* * * * *

(c) *Multiple award preference*—(1) *General preference.* Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (c)(2) of this section, the contracting officer shall, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources. In making a determination as to whether multiple awards are appropriate, the contracting officer shall exercise sound business judgment as part of acquisition planning. No separate written determination to make a single award is necessary when the determination is contained in a written acquisition plan. Multiple awards should not be made if—

(i) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(ii) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(iii) The cost of administration of multiple contracts may outweigh any potential benefits from making multiple awards;

(iv) Tasks likely to be ordered are so integrally related that only a single contractor can reasonably perform the work;

(v) The total estimated value of the contract is less than the simplified acquisition threshold in part 13; or

(vi) The contracting officer determines that multiple awards would not be in the best interests of the Government.

(2) *Contracts for advisory and assistance services.* (i) Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite-quantity contract for advisory and assistance services will not exceed three years and $10,000,000, including all options, a contracting officer may, but is not required to, give preference to making multiple awards. If an indefinite-quantity contract for advisory and assistance services exceeds three years and $10,000,000, including all options, multiple awards shall be made unless—

(A) The contracting officer or other official designated by the head of the agency determines in writing, prior to the issuance of the solicitation, that the services required under the task order contract are so unique or highly specialized that it is not practicable to award more than one contract. This determination may also be appropriate when the tasks likely to be issued are so integrally related that only a single contractor can reasonably perform the work;

(B) The contracting officer or other official designated by the head of the agency determines in writing, after the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or

(C) Only one offer is received.

(ii) The requirements of paragraph (c)(2)(i) of this section are not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services, if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

9. Sections 16.505 and 16.506 are redesignated as 16.506 and 16.505, respectively, and the newly-redesignated 16.505 is revised. The newly-redesignated 16.506 is amended by revising the heading; in paragraph (b) by removing ''Delivery-Order'' and inserting ''Order'' in its place; in paragraph (d)(3) by revising the parenthetical to read ''(but see paragraph (d)(5) of this section).''; and adding paragraphs (f) and (g). The added and revised text reads as follows:

16.505 Ordering.

(a) *General.* (1) When placing orders under this subpart, a separate notice under 5.201 is not required.

(2) The contracting officer or duly appointed ordering officer shall ensure that individual orders clearly describe all services to be performed or supplies to be delivered. Such officer shall also ensure that orders are within the scope, period, and maximum value of the contract.

(3) The contracting officer shall include in the contract Schedule the names of the activity or activities authorized to issue orders.

(4) If appropriate, authorization for placing oral orders may be included in the contract Schedule; provided, that procedures have been established for obligating funds and that oral orders are confirmed in writing.

(5) Orders may be placed by facsimile or by electronic commerce methods, if provided for in the contract.

(6) Orders placed under indefinite-delivery contracts shall contain the following information:

(i) Date of order.

(ii) Contract number and order number.

(iii) Item number and description, quantity, and unit price or estimated cost or fee.

(iv) Delivery or performance date.

(v) Place of delivery or performance (including consignee).

(vi) Packaging, packing, and shipping instructions, if any.

(vii) Accounting and appropriation data.

(viii) Any other pertinent information.

(7) No protest under subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task order contract or delivery order contract except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract.

(b) *Orders under multiple award contracts.* (1) Except as provided for in paragraph (b)(2) of this section, for orders issued under multiple delivery order contracts or multiple task order contracts, each awardee shall be provided a fair opportunity to be considered for each order in excess of $2,500. In determining the procedures for providing awardees a fair opportunity to be considered for each order, contracting officers shall exercise broad discretion and may consider factors such as past performance, quality of deliverables, cost control, price, cost, or other factors that the contracting officer, in the exercise of sound business judgment, believes are relevant to the placement of orders. The procedures and selection criteria that will be used to provide multiple awardees a fair opportunity to be considered for each order must be set forth in the solicitation and contract. The procedures for selecting awardees for the placement of particular orders need not comply with the competition requirements of part 6. However, agencies shall not use any method (such as allocation) that would not result in fair consideration being given to all awardees prior to placing each order. Formal evaluation plans or scoring of quotes or offers are not required. Agencies may use oral proposals and streamlined procedures when selecting an order awardee. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order.

(2) Awardees need not be given an opportunity to be considered for a

particular order in excess of $2,500 under multiple delivery order contracts or multiple task order contracts if the contracting officer determines that—

(i) The agency need for such supplies or services is of such urgency that providing such opportunity would result in unacceptable delays;

(ii) Only one such contractor is capable of providing such supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;

(iii) The order should be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order; or

(iv) It is necessary to place an order to satisfy a minimum guarantee.

(3) The Ocompeting independentlyO requirement of 15.804–1(b)(1) is satisfied for orders placed under multiple delivery order contracts or multiple task order contracts when—

(i) The price for the supplies or services is established in the contract at the time of contract award; or

(ii) The contracting officer solicits offers from two or more awardees for order placement when the price for the supplies or services is not established in the contract at the time of contract award.

(4) The head of the agency shall designate a task order contract and delivery order contract ombudsman who shall be responsible for reviewing complaints from contractors on task order contracts and delivery order contracts. The ombudsman shall review complaints from the contractors and ensure that all contractors are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman shall be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

(c) *Limitation on ordering period for task order contracts for advisory and assistance services.* (1) Except as provided for in paragraph (c)(2) of this section, the ordering period of a task order contract for advisory and assistance services, including all options or modifications, may not exceed five years, unless a longer period is specifically authorized by a statute that is applicable to such a contract. Notwithstanding the five-year limitation or the requirements of Part 6, a task order contract for advisory and assistance services may be extended on a sole-source basis only once for a period not to exceed six months if the contracting officer or other official designated by the head of the agency determines that—

(i) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(ii) The extension is necessary to ensure continuity of services pending the award of the follow-on contract.

(2) The limitation on ordering period contained in paragraph (c)(1) of this section is not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services, if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

16.506 Solicitation provisions and contract clauses.

* * * * *

(f) The contracting officer shall insert the provision at 52.216–27, Single or Multiple Awards, in solicitations for indefinite quantity contracts that may result in multiple contract awards. This provision shall not be used for advisory and assistance services contracts that exceed three years and $10,000,000 (including all options). Contracting officers may modify the provision to specify the number of awards the Government reasonably estimates that it may make.

(g) In accordance with 16.504(a)(4)(vi), the contracting officer shall insert the provision at 52.216–28, Multiple Awards for Advisory and Assistance Services, in solicitations for task order contracts for advisory and assistance services that exceed three years and $10,000,000 (including all options) unless a determination has been made under 16.504(c)(2)(i)(A). Contracting officers may modify the provision to specify the number of awards the Government reasonably estimates that it may make.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 52.216–18 is revised to read as follows:

52.216–18 Ordering.

As prescribed in 16.506(a), insert the following clause:

Ordering (Oct 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from _____ through _____ [insert dates].

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered ''issued'' when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

11. Section 52.216–19 is amended by revising the section heading, introductory text, and clause heading and date to read as follows:

52.216–19 Order Limitations.

As prescribed in 16.506(b), insert a clause substantially the same as follows:

Order Limitations (Oct 1995)

* * * * *

12. Section 52.216–20 is amended by revising the introductory text; revising the clause date to read ''(OCT 1995)'', and in the first sentence of paragraph (c) by removing the word ''Delivery-'' to read as follows:

52.216–20 Definite Quantity.

As prescribed in 16.506(c), insert the following clause:

Definite Quantity (Oct 1995)

* * * * *

13. Section 52.216–21 is amended by revising the introductory text and the second sentence of paragraph (b) by removing the word ''Delivery-'' to read as follows:

52.216–21 Requirements.

As prescribed in 16.506(d), insert the following clause:

* * * * *

14. Section 52.216–22 is amended by revising the introductory text; in the clause heading by removing the date ''(APR 1984)'' and inserting ''(OCT 1995)'' in its place; and in the first sentence of paragraph (c) by removing the word ''Delivery-'' to read as follows:

52.216–22 Indefinite Quantity.

As prescribed in 16.506(e), insert the following clause:

Indefinite Quantity (Oct 1995)

* * * * *

15. Section 52.216–27 is added to read as follows:

52.216–27 Single or Multiple Awards.

As prescribed in 16.506(f), insert the following provision:

Single or Multiple Awards (Oct 1995)

The Government may elect to award a single delivery order contract or task order

contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under this solicitation.

(End of provision)

16. Section 52.216–28 is added to read as follows:

52.216–28 Multiple Awards for Advisory and Assistance Services.

As prescribed in 16.506(g), insert the following provision:

Multiple Awards for Advisory and Assistance Services (Oct 1995)

The Government intends to award multiple contracts for the same or similar advisory and assistance services to two or more sources under this solicitation unless the Government determines, after evaluation of offers, that only one offeror is capable of providing the services at the level of quality required.

(End of provision)

[FR Doc. 95–23868 Filed 9–25–95; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 32

[FAC 90–33; FAR Case 94–765; Item IV]

RIN 9000–AG54

Federal Acquisition Regulation; Fraud Remedies

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act) to implement requirements for fraud remedies. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John Galbraith, Finance/Payment Team Leader, at (703) 697–6710 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–33, FAR case 94–765.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (the Act) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements.

This notice announces amendments developed under FAR case 94–765. 10 U.S.C. 2307 has contained a statutory requirement titled ''Action in Case of Fraud'' applicable to only the Department of Defense. Section 2051(e) of the Act added this statutory requirement to the Federal Property and Administrative Services Act (41 U.S.C. 255) applicable to civilian agencies.

The statutes at 10 U.S.C. 2307 and 41 U.S.C. 255 provide that if the Government official concerned with coordinating the Government's remedies for a particular case of fraud finds that an advance, partial, or progress payment is based on fraud, that official must recommend the head of the agency reduce or suspend further payments to that contractor. The statutes further provide due process requirements, standards for the amount of suspension or reduction, and other policy and procedural requirements. It should be noted that the authority of the head of the agency to act and the rights of the accused are statutory and are not based on contractual agreement. However, in any situation in which the contractor bases a request for payment in fraud, the Government has contractual and legal rights which the contracting officer may exercise to stop or recover payments. The authority provided by these statutes is in addition to those contractual and legal rights and remedies.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule will impact only upon the small percentage of small businesses whose request for an advance, partial, or progress payment is based upon fraud.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule falls within the exception provided under 5 CFR 1320.3(c), *i.e.,* matters pertaining to the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter.

D. Public Comments

The proposed rule was published in the Federal Register on May 12, 1995, at 60 FR 25794. Six comments were received. The most important point noted was the inapplicability of the coverage to the National Aeronautics and Space Administration and the United States Coast Guard. These agencies are normally subject to Title 10 of the United States Code; however, this statutory language specifically applied these statutory provisions to just the Department of Defense. The changes made to the Federal Property and Administrative Services Act (41 U.S.C. 225) apply to all agencies subject to that Act. This coverage has been appropriately modified.

One commentor proposed the addition of the following language to the coverage: ''If payments are suspended and it ultimately is determined that no fraud existed, the contractor shall be entitled to any damages that resulted from such suspension of payment.'' This recommendation was not accepted. Under these statutes, the Government is acting in its role as sovereign, not under its contractual authority. The statutes do not provide the accused with a remedy for incorrect or unproved accusations. Any remedy would be determined by the Constitution and other law and statutes.

List of Subjects in 48 CFR Part 32

Government procurement.

Dated: September 20, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Part 32 is amended as set forth below:

PART 32—CONTRACT FINANCING

1. The authority citation for 48 CFR Part 32 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Sections 32.006 through 32.006–5 are added to read as follows:

Sec.

32.006 Reduction or suspension of contract payments upon finding of fraud.
32.006–1 General.
32.006–2 Definitions.
32.006–3 Responsibilities.
32.006–4 Procedures.
32.006–5 Reporting.

32.006 Reduction or suspension of contract payments upon finding of fraud.

32.006–1 General.

(a) Under Title 10 of the United States Code, the statutory authority implemented by this section is available only to the Department of Defense; this statutory authority is not available to the National Aeronautics and Space Administration or the United States Coast Guard. Under the Federal Property and Administrative Services Act (41 U.S.C. 255), this statutory

authority is available to all agencies subject to that Act.

(b) 10 U.S.C. 2307(h)(2) and 41 U.S.C. 255, as amended by the Federal Acquisition Streamlining Act of 1994, Public Law 103–355, provide for a reduction or suspension of further payments to a contractor when the agency head determines there is substantial evidence that the contractor's request for advance, partial, or progress payments is based on fraud. This authority does not apply to commercial interim payments under subpart 32.2, or performance-based payments under subpart 32.10.

(c) The agency head may not delegate his or her responsibilities under these statutes below Level IV of the Executive Schedule.

(d) Authority to reduce or suspend payments under these statutes is in addition to other Government rights, remedies, and procedures.

(e) In accordance with these statutes, agency head determinations and decisions under this section may be made for an individual contract or any group of contracts affected by the fraud.

32.006–2 Definitions.

As used in this section—

Remedy coordination official means the person or entity in the agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities. (See 10 U.S.C. 2307(h)(10) and 41 U.S.C. 255(g)(9).)

Substantial evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

32.006–3 Responsibilities.

(a) Agencies shall establish appropriate procedures to implement the policies and procedures of this section.

(b) Government personnel shall report suspected fraud related to advance, partial, or progress payments in accordance with agency regulations.

32.006–4 Procedures.

(a) In any case in which an agency's remedy coordination official finds substantial evidence that a contractor's request for advance, partial, or progress payments under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the agency head reduce or suspend further payments to the contractor. The remedy coordination official shall submit to the agency head a written report setting forth the remedy coordination official's findings that support each recommendation.

(b) Upon receiving a recommendation from the remedy coordination official under paragraph (a) of this subsection, the agency head shall determine whether substantial evidence exists that the request for payment under a contract is based on fraud.

(c) If the agency head determines that substantial evidence exists, the agency head may reduce or suspend further payments to the contractor under the affected contract(s). Such reduction or suspension shall be reasonably commensurate with the anticipated loss to the Government resulting from the fraud.

(d) In determining whether to reduce or suspend further payment(s), as a minimum, the agency head shall consider—

(1) A recommendation from investigating officers that disclosure of the allegations of fraud to the contractor may compromise an ongoing investigation;

(2) The anticipated loss to the Government as a result of the fraud;

(3) The contractor's overall financial condition and ability to continue performance if payments are reduced or suspended;

(4) The contractor's essentiality to the national defense, or to the execution of the agency's official business; and

(5) Assessment of all documentation concerning the alleged fraud, including documentation submitted by the contractor in its response to the notice required by paragraph (e) of this subsection.

(e) Before making a decision to reduce or suspend further payments, the agency head shall, in accordance with agency procedures—

(1) Notify the contractor in writing of the action proposed by the remedy coordination official and the reasons therefor (such notice must be sufficiently specific to permit the contractor to collect and present evidence addressing the aforesaid reasons); and

(2) Provide the contractor an opportunity to submit information within a reasonable time, in response to the action proposed by the remedy coordination official.

(f) When more than one agency has contracts affected by the fraud, the agencies shall consider designating one agency as the lead agency for making the determination and decision.

(g) The agency shall retain in its files the written justification for each—

(1) Decision of the agency head whether to reduce or suspend further payments; and

(2) Recommendation received by an agency head in connection with such decision.

(h) Not later than 180 calendar days after the date of the reduction or suspension action, the remedy coordination official shall—

(1) Review the agency head's determination on which the reduction or suspension decision is based; and

(2) Transmit a recommendation to the agency head as to whether the reduction or suspension should continue.

32.006–5 Reporting.

(a) In accordance with 41 U.S.C. 255, the head of an agency, other than the Department of Defense, shall prepare a report for each fiscal year in which a recommendation has been received pursuant to 32.006–4(a). Reports within the Department of Defense shall be prepared in accordance with 10 U.S.C. 2307.

(b) In accordance with 41 U.S.C. 255 and 10 U.S.C. 2307, each report shall contain—

(1) Each recommendation made by the remedy coordination official;

(2) The actions taken on the recommendation(s), with reasons for such actions; and

(3) An assessment of the effects of each action on the Government.

[FR Doc. 95–23863 Filed 9–25–95; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 32

[FAC 90–33; FAR Case 94–761, Item V]

RIN 9000–AG34

Federal Acquisition Regulation; Assignment of Claims

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to Section 2451 of the Federal Acquisition Streamlining Act of 1994 to implement revisions which expand the authority to prohibit setoffs against assignees when contractors assign a contract to a financial institution. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John Galbraith, Finance/Payment Team Leader, at (703) 697–6710, in reference to this FAR case. For general information, contact the FAR

Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–33, FAR case 94–761.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements.

This rule revises FAR 32.803(d) to expand the authorization of a no-setoff commitment in contracts which are assigned under the Act. Prior to the Act, the no-setoff commitment could only be included in a contract during time of war or national emergency. Under the Act, the inclusion of the no-setoff commitment is based solely on whether the President makes a determination of need. The Act further states that each determination of need by the President shall be published in the Federal Register. Until an agency has received such a determination of need, the ''No-Setoff'' Alternate I of the clause at 52.232–23, Assignment of Claims, shall not be used.

The Act also resulted in a reorganization of the United States Code (U.S.C.) to improve the reading format. Some parts of the U.S.C. were deleted as a result of obsolescence, such as the inclusion of the Atomic Energy Commission as a designated agency which may utilize the no-setoff commitment in contracts. Further, the U.S.C. reference to contracts awarded prior to October 9, 1940, was deleted. These changes to 41 U.S.C. 15 did not affect the current FAR language at Subpart 32.8.

The FAR has also been amended to reflect the micro-purchase threshold, in lieu of the previous floor of $1,000, for use of the Assignment of Claims clause.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and space Administration certify that this rule will not have a significant economic impact on a substantial number of small entities because this rule does not significantly change the existing procedures for use of assignment of claims and no-setoff commitments.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

The proposed rule was published in the Federal Register on January 19, 1995 (60 FR 3988). Editorial and technical comments were received from a number of Government agencies; however, no non-Government comments were received. This final rule reflects appropriate changes as a result of those Government comments. The major change is the adjustment of the definition of ''designated agency'' at 32.801.

List of Subjects in 48 CFR Part 32

Government procurement.

Dated: September 21, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Part 32 is amended as set forth below:

PART 32–CONTRACT FINANCING

1. The authority citation for 48 CFR Part 32 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 32.801 is amended by revising the definition of ''Designated agency'' to read as follows:

32.801 Definitions.

* * * * *

Designated agency, as used in this subpart, means any department or agency of the executive branch of the United States Government (see 32.803(d)).

* * * * *

3. Section 32.803 is amended by revising paragraph (d) to read as follows:

32.803 Policies.

* * * * *

(d) Any contract of a designated agency (see 32.801), except a contract under which full payment has been made, may include a no-setoff commitment only when a determination of need is made by the President and after such determination has been published in the Federal Register.

* * * * *

4. Section 32.806 is amended by revising paragraph (a) to read as follows:

32.806 Contract clauses.

(a) (1) The contracting officer shall insert the clause at 52.232–23, Assignment of Claims, in solicitations and contracts expected to exceed the micro-purchase threshold, unless the contract will prohibit the assignment of claims (see 32.803(b)). The use of the clause is not required for purchase orders. However, the clause may be used in purchase orders expected to exceed the micro-purchase threshold, that are accepted in writing by the contractor, if such use is consistent with agency policies and regulations.

(2) If a no-setoff commitment has been authorized by the President (see 32.801 and 32.803(d)), the contracting officer shall use the clause with its Alternate I.

* * * * *

[FR Doc. 95–23864 Filed 9–25–95; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Tuesday
September 26, 1995

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1995.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of September 1, 1995, of 28 rescission proposals and seven deferrals contained in five special messages for FY 1995. These messages were transmitted to Congress on October 18, and December 13, 1994; and on February 6, February 22, and May 2, 1995.

Rescissions (Attachments A and C)

As of September 1, 1995, 28 rescission proposals totaling $1,199.8 million had been transmitted to the Congress. Congress approved 24 of the Administration's rescission proposals in P.L. 104–6 and P.L. 104–19. A total of $845.4 million of the rescissions proposed by the President was rescinded by those measures. Attachment C shows the status of the FY 1995 rescission proposals.

Deferrals (Attachments B and D)

As of September 1, 1995, $386.7 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1995.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the Federal Register cited below:

59 FR 54066, Thursday, October 27, 1994

59 FR 67108, Wednesday, December 28, 1994

60 FR 8842, Wednesday, February 15, 1995

60 FR 12636, Tuesday, March 7, 1995

60 FR 24692, Tuesday, May 9, 1995

Alice M. Rivlin,

Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1995 RESCISSIONS
(in millions of dollars)

	Budgetary Resources
Rescissions proposed by the President.....	1,199.8
Rejected by the Congress.....	---
Amounts rescinded by P.L. 104-6 and P.L. 104-19....	-845.4
Currently before the Congress.....	354.4

ATTACHMENT B

STATUS OF FY 1995 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President.....	4,699.1
Routine Executive releases through September 1, 1995 (OMB/Agency releases of $4,314.8 million, partially offset by cumulative positive adjustment of $2.5 million).....	-4,312.3
Overturned by the Congress.....	---
Currently before the Congress.....	386.7

ATTACHMENT C
Status of FY 1995 Rescission Proposals - As of September 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Foreign Agricultural Service								
Public Law 480 program account	R95-1		43,865	2-6-95	43,865	3-28-95	40,000	P.L. 104-19
Public Law 480 grants, title I (OFD), II, and III			98,635	2-6-95	98,635	3-28-95		
Food and Nutrition Service								
Food stamp program	R95-2		2,900	2-6-95	2,900	3-28-95		
DEPARTMENT OF COMMERCE								
National Telecommunications and Information Administration								
Public broadcasting facilities, planning and construction	R95-3		18,000	2-6-95	18,000	3-31-95		
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
School improvement programs	R95-4		138,084	2-6-95	35,000	3-15-95	18,584	P.L. 104-19
	R95-4A		-35,000	2-22-95	103,084	3-30-95	65,000	P.L. 104-6
Office of Vocational and Adult Education								
Vocational and adult education	R95-5		43,888	2-6-95	43,888	3-30-95	43,888	P.L. 104-19
Office of Postsecondary Education								
Higher education	R95-6		26,903	2-6-95	26,903	3-30-95	9,493	P.L. 104-19
College housing and academic facilities program	R95-7		168	2-6-95	168	3-30-95	168	P.L. 104-19
Office of Educational Research and Improvement								
Education research, statistics, and improvement	R95-8		750	2-6-95	750	3-30-95		
Libraries	R95-9		12,942	2-6-95	12,942	3-31-95		
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Resources and Services Administration								
Health resources and services	R95-10		29,147	2-6-95	29,147	3-28-95	29,147	P.L. 104-19

ATTACHMENT C
Status of FY 1995 Rescission Proposals - As of September 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Centers for Disease Control and Prevention								
Disease control, research, and training	R95-11		1,300	2-6-95	1,300	3-28-95	1,300	P.L. 104-19
National Institutes of Health								
National Center for Research Resources	R95-12		1,000	2-6-95	1,000	3-28-95	1,000	P.L. 104-19
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R95-13		439,200	2-6-95	439,200	3-28-95	268,200	P.L. 104-19
Congregate services	R95-14		37,000	2-6-95	37,000	3-28-95	37,000	P.L. 104-19
DEPARTMENT OF JUSTICE								
Federal Prison System								
Salaries and expenses	R95-26		28,037	5-2-95	*		28,037	P.L. 104-19
DEPARTMENT OF LABOR								
Bureau of Labor Statistics								
Salaries and expenses	R95-15		1,100	2-6-95	1,100	3-29-95	700	P.L. 104-19
DEPARTMENT OF TRANSPORTATION								
Federal Railroad Administration								
Local rail freight assistance	R95-16		13,216	2-6-95	13,216	3-31-95	6,563	P.L. 104-6
Office of the Secretary								
Payments to air carriers (Airport and airway trust fund)	R95-17		7,680	2-6-95	*		5,300	P.L. 104-19
Federal Aviation Administration								
Grants-in-aid for airports (Airport and airway trust fund)	R95-27		94,000	5-2-95	*		94,000	P.L. 104-19

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1995 Rescission Proposals - As of September 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
ENVIRONMENTAL PROTECTION AGENCY								
Abatement, control, and compliance	R95-18		11,642	2-6-95	6,835	2-6-95		
	R95-18A		-6,835	2-6-95	4,807	3-28-95	4,807	P.L. 104-19
Water infrastructure financing	R95-18B		3,200	2-6-95	3,200	3-28-95	3,200	P.L. 104-19
Research and development	R95-18C		3,635	2-6-95	3,635	3-28-95	3,635	P.L. 104-19
	R95-18C-1		Language	2-22-95				
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Mission support	R95-19		1,000	2-6-95	1,000	3-28-95	1,000	P.L. 104-19
Construction of facilities	R95-20		27,000	2-6-95	27,000	3-28-95	27,000	P.L. 104-19
Space flight, control, and data communications	R95-28		10,000	5-2-95	10,000	6-26-95	10,000	P.L. 104-19
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R95-21		15,000	2-6-95	15,000	4-6-95	15,000	P.L. 104-6
OTHER INDEPENDENT AGENCIES								
Chemical Safety and Hazard Investigation Board								
Salaries and expenses	R95-22		500	2-6-95	500	3-28-95	500	P.L. 104-19
National Science Foundation								
Academic research infrastructure	R95-23		131,867	2-6-95	131,867	3-27-95	131,867	P.L. 104-19
TOTAL RESCISSIONS		**0**	**1,199,824**		**1,111,942**		**845,389**	

[FR Doc. 95-23882 Filed 9-25-95; 8:45 am]
BILLING CODE 3110-01-C

ATTACHMENT D
Status of FY 1995 Deferrals - As of September 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9-1-95
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and International fund for Ireland	D95-1	53,300		10-18-94					
	D95-1A		1,173,948	12-13-94	929,017			2,525	300,757
Foreign military financing grants	D95-2	3,139,279		10-18-94	3,124,181				15,098
Foreign military financing program account	D95-3	47,917		10-18-94	44,892				3,025
Military-to-military contact program	D95-4	2,000		10-18-94	2,000				0
Agency for International Development									
International disaster assistance, executive	D95-5	169,998		10-18-94	169,936				62
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D95-6	7,319		10-18-94					
	D95-6A		2	2-22-95					7,321
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D95-7	105,300		10-18-94	44,814				60,486
TOTAL, DEFERRALS		**3,525,113**	**1,173,950**		**4,314,840**			**2,525**	**386,748**

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